

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. ) Criminal Action No.:  
 ) 2:13cr156  
W. WAYNE PERRY, JR. )  
and )  
ANGELA PERRY, )  
 )  
Defendants. )

EXCERPT OF JURY TRIAL PROCEEDINGS

Volume 13  
(Closing Arguments)  
Pages 2453-2596

Norfolk, Virginia  
September 15, 2014

BEFORE: THE HONORABLE MARK S. DAVIS  
United States District Judge, and a Jury.

Appearances:

OFFICE OF THE UNITED STATES ATTORNEY

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Counsel for the United States

WILLIAMS MULLEN, PC

By: JOHN STAIGE DAVIS, V, ESQUIRE

GRAY BOLLING BROUGHTON, ESQUIRE

Counsel for Defendant W. Perry

SACKS AND SACKS

By: ANDREW SACKS, ESQUIRE

Counsel for Defendant A. Perry

The Defendants appearing in person.

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*Government Closing*

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P R O C E E D I N G S

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(Jury entered the courtroom at 11:39 a.m.)

THE COURT: Everyone can be seated.

All right. Ms. O'Boyle, is the government ready to make its closing?

MS. O'BOYLE: Yes, Your Honor.

THE COURT: You may proceed.

MS. O'BOYLE: May it please the court.

Ladies and gentlemen of the jury, the government has proven beyond a reasonable doubt that W. Wayne Perry, Jr. and Angela Perry executed a billing scheme to defraud Medicaid, and then altered records to cover up that fraud and prevent retractions back to Medicaid.

Now, at the beginning of this case, Mr. Salsbury told you that it was a case about dishonesty, deception and fraud. And now that you've heard all of the evidence, we can also explain that this is a case about something else. Good, old-fashioned greed. You saw it on full display when Wayne Perry took this stand, and he looked at a chart documenting that he had made more than \$750,000 in 2011, only to scoff that he could have made more if his staffing coordinators hadn't defrauded him. Wayne Perry, assisted by his wife Angela Perry, operated Community Personal Care as a criminal enterprise, and that is why the right people are here on trial today.

*Government Closing*

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1 Now, at its core, this is a very simple case. The  
2 goal of the Medicaid program is a to help poor and needy people  
3 obtain access to healthcare. And Medicaid is a state and  
4 federally funded healthcare program. Now, if Wayne and Angela  
5 Perry had been operating a business that had nothing to do with  
6 government money, nothing at all, we would not be here today.  
7 But Community Personal Care derived almost all of its income  
8 from Medicaid. And even Wayne Perry told you that the Medicaid  
9 program is based on trust. And when Wayne Perry signed  
10 agreements with the Medicaid program, he promised to comply with  
11 all state and federal laws and all Medicaid regulations.

12 Now, one of the basic principles governing the  
13 Medicaid program is not all that difficult to understand. You  
14 can't -- a provider can't bill for services that he did not  
15 provide. There's no such thing as a free lunch, particularly  
16 when you're dealing with a government program. And as a family  
17 doesn't pay a babysitter for 20 hours of work if the babysitter  
18 only works for two. Medicaid will not pay for 49 hours of care  
19 if an aide was only there for seven hours. As Angela Perry put  
20 it from the witness stand on Friday, "Billing by the plan of  
21 care is fraud. We don't live in a perfect world, it's fraud."  
22 Plain and simple.

23 And another basic principle is that Medicaid is paying  
24 providers for a very specific type of service. Medicaid money  
25 is not a pot of gold at the end of the rainbow that providers

*Government Closing*

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1 have access to for any reason. Providers access this money by  
2 providing a service, such as respite services, to relieve the  
3 caregiver of the physical burden and emotional stress of  
4 providing continuous support for their loved one. But again, a  
5 provider cannot bill for a service that they do not provide.  
6 And let's be very, very clear here: Wayne and Angela Perry are  
7 not on trial because they violated Medicaid regulations. These  
8 rules and regulations are things that Wayne Perry clearly  
9 understood. The first 10 minutes of my cross-examination, we  
10 were in agreement on practically everything. But we presented  
11 this evidence of the regulations to assist you in determining  
12 whether Wayne and Angela Perry had the knowledge and the intent  
13 to defraud Medicaid, and that is precisely what they're charged  
14 with in the superseding indictment.

15 Now, the superseding indictment in this case charged  
16 Wayne Perry and Angela Perry with committing five separate types  
17 of crimes, all arising from the fraudulent billing scheme and  
18 the alteration of records. Now, the government bears the burden  
19 of proving these crimes beyond a reasonable doubt, and I have  
20 two goals here with my closing argument here today. First, I'm  
21 going to tell you where to locate the documentary evidence that  
22 provides the basis for all the substantive charges. And then  
23 second, I want to give you some things to think about when you  
24 go back into the jury room with the evidence that you heard  
25 presented over the last three weeks.

*Government Closing*

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1           So let's talk about Count 1, the conspiracy charge.  
2 Now, the superseding indictment alleges that Wayne and Angela  
3 Perry conspired together with others to achieve two different  
4 purposes: First, to obtain Medicaid money by causing to be  
5 submitted false, fraudulent and fictitious claims to Medicaid.

6           Second, to alter aide records, the DMAS-90s that  
7 you've seen throughout this trial, to prevent Medicaid from  
8 discovering the fraud and to prevent Medicaid from recovering  
9 fraudulent over payments.

10           Now, the evidence presented to support the conspiracy  
11 charge is literally every piece of evidence that you received in  
12 this case, every witness that testified, every document that you  
13 received, all of that supports the conspiracy charge. For  
14 example, you've seen substantial evidence that the company  
15 billed by the plan of care and not the aide records in 2009,  
16 2010, 2011 and 2012. For example, you have the summary charts  
17 in evidence. Exhibit 52, Velma Morris's summary chart. If you  
18 take a look at it, every single week, 46 hours billed that were  
19 not supported by the aide records. This is plan of care  
20 billing, ladies and gentlemen. And as Wayne Perry told you, "If  
21 it isn't documented, it wasn't done." And it makes sense:  
22 Aides only got paid if they turned in their aide record. And  
23 aides need to get paid.

24           So this continued into 2010. This is Emma Willard's  
25 summary chart, Exhibit 32. And if you look in 2010, again,

1 overbilling almost every single week. Billing by the plan of  
2 care that is not supported by the aide records.

3           Going into 2011, Christopher Leach's summary chart,  
4 again, billing by the plan of care every week, not supported by  
5 the aide records.

6           And continuing into 2012, this is Jessie Fenton,  
7 Exhibit 66, again, every week billing by the plan of care and it  
8 not being supported by the aide records.

9           It was systemic overbilling across patients and over a  
10 period of four years.

11           Likewise, you have substantial evidence of the ongoing  
12 alteration of records going on at CPC. You have Exhibit 22A,  
13 which is Elsie Johnson's aide records, a number of them in the  
14 thinned chart. You saw -- we put these up repeatedly during the  
15 trial, alterations to these documents.

16           You also have Exhibit 80, which is filled with  
17 examples that were pulled directly from the charts that you also  
18 have in evidence, of comments being added, hours being added.  
19 This is all documents that support the alteration of records  
20 count. And this is Count 14.

21           Counts 2 through 5 charge the substantive healthcare  
22 fraud counts. And you heard the court's description of these  
23 elements. Now, the court also told you that it's not necessary  
24 for the government to prove that each defendant personally did  
25 every act constituting the offense charged. You can act through

1 others. You can act through your employees. Dee Lindsey,  
2 Artincy Hobbs, Sarina Freeman, and others. So if the acts or  
3 conduct of another is deliberately ordered or directed by a  
4 defendant or deliberately authorized or consented to by a  
5 defendant, then the law holds that defendant responsible just  
6 the same as if it was personally done by him or her.

7           So what does that mean? That means it doesn't matter  
8 that Wayne Perry wasn't the one behind the computer submitting  
9 each fraudulent claim. If the employees were acting at his  
10 direction, then he is accountable. It doesn't matter that  
11 Angela Perry wasn't the one who was altering every single  
12 document. If the employees were acting at her direction, then  
13 she is accountable. And it makes sense. You can't avoid legal  
14 liability, ladies and gentlemen, just by asking other people to  
15 do your dirty work.

16           So where can you locate the evidence to support  
17 Counts 2 through 5? Let's use Count 2 as an example. You'll  
18 see in the instructions it relates to Joseph Dickerson, and it  
19 relates to both personal care overpayment and respite care  
20 overpayment. Now, for each of these substantive counts you have  
21 the patient's chart in evidence. Joseph Dickerson's chart is  
22 Exhibit 20. And right behind each patient chart is the summary  
23 chart that relates to this patient. And that's going to be true  
24 for each of these counts: You have the patient chart and the  
25 summary chart right behind it.



1 Now, if you take a look at Exhibit 21, which is what  
2 we're looking at, this is the last page. And she prepared  
3 the -- Agent Wright testified she prepared this chart by looking  
4 at the claims and then taking the face sheets, the aide records  
5 at their face value, and just looking at, pulling the amount  
6 directly off that time sheet. So if you look at the back page,  
7 you have the personal hours billed to Medicaid and the hours  
8 documented on the time sheets.

9 Now, by all means, go back behind her. Pull out  
10 Joseph Dickerson's patient chart and look at those time sheets  
11 and verify what she said. But she also testified that she went,  
12 she did that exercise three times to verify the accuracy of her  
13 summary charts.

14 And so Count 2 charges an over care payment based  
15 on -- or overpayment based on personal care hours billed to  
16 Medicaid in the amount of \$5,410.47.

17 Also, the other part of this scheme was the respite  
18 care, and this respite care overpayment is based on the total  
19 amount of respite care billed by Community Personal Care to  
20 Medicaid.

21 Now, for Mr. Dickerson, you heard from Wanda Davis.  
22 She was his daughter. She runs an in-home daycare. And she  
23 testified that she never requested respite services from  
24 Community Personal Care to relieve her of the obligation of  
25 taking care of her mother or her father. And yet, 19,000 --

1 over \$19,000 was billed for that purpose. That's Count 2.

2 Count 3 is Elsie Johnson. Again, her charts are  
3 Exhibit 22, 22A with the summary chart, which is what you're  
4 looking at in front of you. Right behind it is Exhibit 23. You  
5 have the personal care overpayment and the respite care  
6 overpayment as the basis for Count 3.

7 This respite care relates to Wanda McNair, who you  
8 heard from. Wanda McNair is Elsie Johnson's daughter. She  
9 works at the dental office, and she came in and testified  
10 briefly for us. She also testified that she never requested  
11 respite care hours to relieve her of the burden of taking care  
12 of her mother.

13 Count 4 is Elizabeth Mullen. Her chart is at  
14 Exhibit 25, and then the summary chart is Exhibit 26. Again,  
15 personal care overpayment and respite care overpayment totals  
16 are in Exhibit 26. The respite care relates to Michael Mullen  
17 who you heard a bit about. He was the dapper-looking gentleman  
18 who came here from Maryland. He testified that he had never  
19 heard of respite care services, and certainly never requested  
20 them. And yet there are \$35,000 in respite care services that  
21 were paid for to Community Personal Care by Medicaid. That is  
22 Count 4.

23 Count 5 deals with Genevieve Roundtree. Her chart is  
24 at Exhibit 27 and her summary chart is Exhibit 28. And if you  
25 go to the last, very last page, that gives you the personal care

1 overpayment and the respite care overpayment. Now, for  
2 Genevieve Roundtree, her primary caregiver was Willaeta Freeman,  
3 and Ms. Roundtree actually did live with Ms. Freeman. And Ms.  
4 Freeman testified that she recalled using respite care on a  
5 couple of occasions, and as a result, Agent Wright backed those  
6 occasions out of her respite care total.

7 Now, it is not necessary for the government to have  
8 proven both components of each of these charges. So what that  
9 means is if you all unanimously agree that the plan of care  
10 billing was a fraud and there was an overpayment related to the  
11 personal care hours, and you all agree about that, then that is  
12 sufficient.

13 Alternatively, if you all agree that the respite care  
14 piece of this was a fraud, and you all agree on that, that is  
15 sufficient as well. It's either/or. Or you can agree that we  
16 proved it all by a reasonable doubt and you can find liability  
17 based on that. But just keep that in mind as you're going  
18 through that evidence; that with respect to these, it doesn't  
19 have to be both, it can be one or the other, but you all have to  
20 agree as to one.

21 Now, Count 6 through 13 charge false statements  
22 related to healthcare matters. And this is where we get all the  
23 way down to the individual claim, okay? And this Count 6  
24 charges -- 6 through 9 based, again, on the personal care  
25 overpayment. So this is plan of care billing. Count 6 is

1 Robert Gould. And if you go to Page 1 of his summary chart,  
2 which is Exhibit 30, you can zero in=on the precise claim issue  
3 in the indictment, which shows 217 hours billed and only 17  
4 hours reflected in the time sheets for that month in October of  
5 2009. That's Count 6.

6 Count 7 is Emma Willard. Emma Willard's chart is  
7 again, exhibit, 31, the summary chart is Exhibit 32. If you go  
8 to Page 5 of this, it shows the precise claim at issue. 42  
9 hours personal care hours billed to Medicaid, only 18 hours  
10 documented on the time sheet. That's the basis for the false  
11 statement for Count 7.

12 Count 8 relates to Joseph Dickerson. His chart's at  
13 Exhibit 21, and -- or his patient chart is at Exhibit 20, this  
14 is Exhibit 21, Page 4. You can zero in on the precise claim at  
15 issue: 49 hours billed to Medicaid, 22 hours in the chart.

16 Count 9 is Elsie Johnson. Again, Exhibit 23 is her  
17 summary chart. If you go to Page 6, you can zero in right at  
18 the claim at issue: 42 hours billed for the time frame of  
19 January 1st through January 9th of 2011, five hours documented  
20 on the summary chart. This is the false statement alleged in  
21 Count 9.

22 Now, Counts 10 through 13 are false claims based  
23 solely on respite. And again, Count 10, the false claim relates  
24 to respite care purportedly provided for Elizabeth Mullen. If  
25 you go to Elizabeth Mullen's chart, which is Exhibit 26, this is

1 her summary chart, the very first page, and you zero in on the  
2 very, very last claim on that first page, it shows \$538.79 in  
3 fraudulent respite care services purportedly to relieve Michael  
4 Mullen, her son from Maryland, of the burden of caring for her.  
5 Count 10.

6 Count 11 deals with Lucille Hatton. Now, Ms. Hatton,  
7 her summary chart is -- her patient chart is Exhibit 33, her  
8 summary chart is Exhibit 34. And if you go to Page 2 of this  
9 summary chart, it shows a claim for 100 hours of respite care  
10 totaling a little over a thousand dollars being submitted on  
11 January 15th of 2010 for nine days of service dates at the very  
12 beginning of 2010. On the same day that Michael Mullen  
13 testified, you also heard from William Hatton. And William  
14 Hatton is Lucille Hatton's son. Like Mr. Mullen, he also  
15 testified that he had never requested respite care services,  
16 and. Yet here we have a claim being submitted purportedly to  
17 relieve him of the burden of caring for his mother, Lucille.  
18 That's Count 11.

19 Count 12 is Virginia Scales. Her chart is at  
20 Exhibit 35 and then her summary chart is Exhibit 37 -- or I'm  
21 sorry, 35 and Exhibit 36. This is Page 7 of that summary chart.  
22 And you can zero in right on the claim at issue: 59 hours of  
23 respite care billed to Medicaid for \$761.69. You heard from  
24 Ms. Patricia Baugh, who was Virginia Scales' listed primary  
25 caregiver. Ms. Baugh was her niece, and Ms. Scales was her

1 aunt. Ms. Baugh testified that she didn't recall even learning  
2 about respite care services until the middle of 2012. So  
3 respite care being given for her benefit in 2011 certainly  
4 wasn't requested by Ms. Patricia Baugh. That's Count 12.

5 Count 13 relates to Casey McCook. And you heard from  
6 Ms. Faulkner, who was Mr. McCook's aunt. And she understood  
7 Medicaid because she actually works in the healthcare industry  
8 as well. And she also testified that she had never even spoken  
9 to anyone at Community Personal Care, and certainly had never  
10 requested respite services for Casey McCook. And yet if you go  
11 to Exhibit 38 and zero in on this precise claim at issue, 109  
12 hours of respite care services were submitted by Community  
13 Personal Care, purportedly to relieve her of the stress and  
14 burden of caring for Casey McCook.

15 Now, Counts 15 through 18 charge aggravated identity  
16 theft related to the use of Medicaid identification numbers to  
17 fraudulently bill Medicaid for respite services that weren't  
18 provided.

19 Counts 15 and 16 relate to Judith Green. And Judith  
20 Green was one of two recipients that we brought in that  
21 testified here during this trial. She was the very tiny lady  
22 who used to be a school teacher. And she testified that she  
23 never had a personal care aide at her home for more than a few  
24 hours, never had care on weekends except for maybe one time, and  
25 she didn't even have a primary caregiver. And yet, her

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1 exhibits, her chart is at Exhibit 39. Exhibit 40 and Exhibit 41  
2 were shown to Ms. Green reflecting 85 hours of respite care  
3 being billed for two separate weeks. She denied receiving the  
4 care, denied ever signing the respite sheets, and stated that  
5 she had never authorized anyone at Community Personal Care to  
6 bill Medicaid for care that had not been provided to her.

7 Count 15 is based on Exhibit 40. Count 16 is based on  
8 Exhibit 41, which we also showed to Ms. Green. And she denied  
9 ever receiving the care, denied signing the documents, and yet  
10 Agent Wright confirmed that Community Personal Care billed  
11 Medicaid for these sheets and used Ms. Green's Medicaid  
12 identification number in that bill. That is Count 16.

13 Now, Count 17 and 18 relate to Doris Rogers and her  
14 Medicaid identification number. Now, Ms. Rogers also testified  
15 before you. She came in in a wheelchair, and she was a  
16 schoolteacher, and she testified as well that she didn't have a  
17 primary caregiver. Her chart is located at Exhibit 42. It  
18 contains her Medicaid identification number. We showed  
19 Ms. Rogers Exhibit 43 and 44, which reflect 20 to 27 hours of  
20 respite care that had been billed for two separate weeks. And  
21 Agent Wright confirmed that the Medicaid identification number  
22 was used, these were absolutely billed. Ms. Rogers denied  
23 receiving this care, denied signing the respite sheets, and  
24 stated that she had not authorized anyone to use her Medicaid  
25 identification number to bill for respite care that had not been

1 provided to her.

2           Now, at one point you'll recall Ms. Rogers, who was  
3 sitting right in front of the witness stand in her wheelchair,  
4 we showed her the document, and she looked very perplexed. And  
5 she asked "Who did this? How did this happen?" And in that one  
6 moment, she encapsulated the whole point of this trial: "Who  
7 did this? How did it happen?" Ladies and gentlemen, fraud was  
8 clearly committed in this case. There is simply no doubt about  
9 it. But the ultimate question in this case, what this case  
10 really boils down to, is was this a fraud committed by the  
11 Perrys, or was this a fraud committed on them. Did Wayne Perry  
12 and Angela Perry direct fraudulent activities to be done, or  
13 were these simply employees running amok?

14           Over the course of this trial you heard two totally  
15 different versions of what went on at Community Personal Care  
16 between 2009 and 2012. And you have, the government submits,  
17 what all the other witnesses said in this case, including  
18 defense witnesses, on one hand, and then you have what Angela  
19 Perry and Wayne Perry said happened on the other. And this case  
20 boils down to credibility. And credibility determinations are  
21 yours and yours alone to make. And back there in that jury  
22 room, the recollection of what happened, you are the judges of  
23 this evidence. So what the attorneys recall happened and what  
24 we argue here today, it's important, but at the end of the day,  
25 your recollection controls. Your recollection about what the



1 witnesses said and whether they were being truthful controls  
2 back there in that jury room.

3 Now, again, the government bears the burden of proof  
4 at all times in this case. All times. But when defendants  
5 testify, when they testify, as the judge just instructed you,  
6 you get to judge that testimony the same, in the same manner as  
7 you would judge every other witness in this case. So let's look  
8 first at what Wayne and Angela Perry had to say about billing by  
9 the plan of care.

10 Wayne Perry told you that he never instructed his  
11 employees to bill by the plan of care, he thought they were  
12 billing by the aide records. He claims he had no knowledge  
13 whatsoever that his company was billing by the plan of care. He  
14 apparently learned that in this trial. And no one, not even  
15 Allison Hunter-Evans, ever raised a concern with him that the  
16 company was billing by the plan of care and not by the aide  
17 records.

18 Angela Perry also told you that she believed that the  
19 company was billing by the aide records, and not the plan of  
20 care. She flat-out said the billing by the plan of care would  
21 be fraud. And now she at least admitted that Allison  
22 Hunter-Evans did raise, on one occasion with her, the concern  
23 that Wayne was billing by the plan of care. And she recalls  
24 that her response was if, if that is true, plan of care billing  
25 is going to be the death of him.

1           Now, that's an interesting statement, because what she  
2 recalls being said and her response to it, if plan of care is a  
3 fraud, Allison Hunter-Evans was accusing her husband of a fraud.  
4 And yet she doesn't ask her husband if he's billing by the plan  
5 of care? And isn't it a little strange that Angela Perry admits  
6 having a conversation with Allison Hunter-Evans about billing by  
7 the plan of care, but Wayne Perry claims that she never raised  
8 it with him at all.

9           Now let's contrast what Wayne and Angela said from the  
10 stand with everything else that you heard in this case. Let's  
11 talk about what Wayne's and Angela's employees said. The first  
12 substantive witness you heard from was Azuradee Lindsey. Now,  
13 it's never easy to be the first substantive witness in a case,  
14 and I want to urge you to go back and think about what Dee  
15 Lindsey said in the context of everything you else -- everything  
16 else you heard that followed her testimony.

17           Ms. Lindsey testified that Wayne instructed her to  
18 bill by the plan of care; that she -- he allowed her to bill by  
19 the aide records for one week. It was an experiment. She did  
20 it, she went back to him, gave him the results of it, and he  
21 told her to go back to billing by the plan of care.

22           She also told you that on her own dime, on her own  
23 dime, she went and took a class in Medicaid billing, and came  
24 back and talked to Wayne about it, and he told her to bill by  
25 the plan of care and not the aide records. She said she knew it

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1 was wrong to bill by the plan of care, but she did what Wayne  
2 told her to do, because she need to keep her job.

3 And Ms. Lindsey's testimony was immediately  
4 corroborated by the next witness, Artincy Hobbs. Artincy Hobbs  
5 likewise testified that she billed by the plan of care because  
6 that's how Wayne told her to do it. She testified that she  
7 never used the personal care time sheets to bill. She used the  
8 respite care time sheets to bill, but she always billed by the  
9 plan of care.

10 Then she testified she maintained a journal, the pink  
11 journal, which is Exhibit 14 in an attempt to track the  
12 hospitalizations and absences, because she was billing by the  
13 plan of care, but trying to retract payments when she noticed  
14 that the person didn't actually work.

15 She also testified that, after the execution of the  
16 search warrant, Wayne Perry told her to now bill by the aide  
17 records. Use Generations to bill. And so she finally started  
18 to do that, and it was so much easier.

19 And Generations, Mr. Sears told you all about  
20 Generations. Generations was the computer program that they had  
21 plenty of people entering in the aide records so that their  
22 payroll could be accurate. But they never billed from it. Not  
23 once. Until after the federal search warrant.

24 Now, ladies and gentlemen, you heard from Azuradee  
25 Lindsey and Artincy Hobbs. They were the billing clerks.

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1 They're the ones that billed by the plan of care per Wayne's  
2 instruction. But their testimony was corroborated by plenty of  
3 other witnesses.

4 Linda Hanson was the director of nursing. She  
5 admitted that Wayne Perry directed the billing clerks to bill by  
6 the plan of care and not the aide records, and that he continued  
7 to bill by the plan of care until she left the company.

8 Christina Brown, another nurse, testified that the  
9 company billed by the plan of care.

10 Renee Neighbors-Everson testified that the company  
11 billed by the plan of care.

12 Sherrice Ford testified that the company billed by the  
13 plan of care for Medicaid billing.

14 Allison Hunter-Evans testified that she raised  
15 concerns with Wayne Perry at least three times. She figured out  
16 that they were billing by the plan of care during the  
17 preparation for the Clifton Gunderson audit, and she raised the  
18 issue with him three times, and he never changed his procedures.  
19 She also said that she talked to Angela Perry. And it was a  
20 strikingly similar conversation to what Angela Perry says  
21 occurred: That she warned -- Allison Hunter-Evans's version of  
22 it was he's billing to the plan of care, to which Angela Perry  
23 replied, plan of care billing is going to be the denial of him.

24 But ladies and gentlemen, the government's witnesses  
25 were not the only ones to verify that plan-of-care billing was

1 the instruction given to these billing clerks.

2 Louis Wilson, the deposition that you heard, at the  
3 very end, in response to a question of Mr. Sacks, Louis Wilson  
4 said that it was a backwards billing process; that they were  
5 billing from the care plan.

6 Jean Watson, another nurse, said that defendant --  
7 that Mr. Davis and Mr. Broughton put on -- she admitted, we  
8 billed by the plan of care.

9 But perhaps the most important witness who confirmed  
10 this fact for you, was James Sears. James Sears was the chief  
11 financial officer of this company. He has been Wayne Perry's  
12 friend for 20 years. 20 years. And James Sears testified that  
13 they billed by the plan of care and that Wayne Perry directed  
14 the billers how to bill. And this directly contradicts Wayne  
15 Perry's claim that he didn't direct anybody to bill by the plan  
16 of care and he didn't even know it was happening.

17 And it stretches all bounds of common sense, ladies  
18 and gentlemen, to believe that James Sears, Mr. Perry's  
19 right-hand man and chief financial officer, was aware that  
20 plan-of-care billing was going on at Community Personal Care;  
21 that every week they were submitting fraudulent claims, but  
22 somehow didn't tell his boss, Wayne Perry, about it.

23 But look at the documentary evidence. The documentary  
24 evidence also corroborates Dee Lindsey and Artincy Hobbs. If  
25 you look at the summary charts in the case, ladies and

1 gentlemen, the ones that we just went through, with all the  
2 numbers, those verify that plan-of-care billing was going on.

3 Exhibit 5 tells you, shows you exactly when they  
4 started billing by the aide records: After the federal search  
5 warrant. Remember, James Sears testified that they lost a few  
6 patients, a few patients between November and December, and  
7 approximately eight patients between December and January. The  
8 difference in this chart, ladies and gentlemen, is because they  
9 finally started billing by the aide records instead of by the  
10 plan of care.

11 And you've got the white board, we've heard a lot  
12 about that, where they were documenting hospitalizations; the  
13 in-house communication forms where the staffing coordinators  
14 were telling Ms. Hobbs and Ms. Lindsey that people were refusing  
15 care; you've got the pink journal, this Government Exhibit 14.  
16 Go ahead and look through it. Page through it. Look at it.  
17 See what she was doing. None of this -- if they were billing  
18 from the aide records, then the billing would be accurate. All  
19 of these mechanisms that they were using to try to monitor  
20 something that wasn't related to the plan of care, none of this  
21 would be necessary. You bill from the aide records, your  
22 billing is accurate. The only reason they used the white board,  
23 a pink journal, in-house communication forms, was to track  
24 changes from the plan of care.

25 Now, Wayne and Angela Perry are attempting to lay the

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1 plan of care billing at the feet of criminal mastermind -- as my  
2 opposing counsel is so fond of saying -- Artincy Hobbs. Why  
3 would she do this all on her own? Because the staffing  
4 coordinators bought her a Coach purse that she didn't like and  
5 ultimately returned? Ladies and gentlemen, follow the money.  
6 It was not Artincy Hobbs's decision to bill by the plan of care  
7 and commit ongoing Medicaid fraud so that Wayne Perry could pay  
8 himself \$79,000 a month. Almost every person in this company,  
9 from billing clerk, to nurse, to medical records custodian, was  
10 aware of how Community Personal Care was billing Medicaid.  
11 Everyone. Except, purportedly, for the one person who was  
12 responsible for ensuring that truthful claims were submitted to  
13 Medicaid, and the two people who benefited the most from the  
14 fraudulent billing practices.

15           The evidence has proven beyond a reasonable doubt that  
16 the defendants directed the plan of care billing. This wasn't a  
17 fraudulent billing scheme committed on them, it was committed by  
18 them. And the plan of care billing permeated that entire  
19 organization with fraud. Because once you fraudulently overbill  
20 Medicaid, you have to alter the records to cover it up. The  
21 fact that there was ongoing alteration of records going on, the  
22 witnesses that you've heard -- and that's what you're going to  
23 move to next -- all confirming that there were alterations of  
24 records going on from 2009 all the way through to 2012, if  
25 you're billing by the aide records, your aide records are going

1 to be accurate and there's no need for constant alteration of  
2 records. But the need for an ongoing alteration of records  
3 arose because they were billing by the plan of care. These two,  
4 these two things fit together like hand in glove.

5 So let's look at what Wayne and Angela Perry had to  
6 say under oath about audits. Wayne Perry testified that he  
7 never directed anyone to alter aide records, and never had any  
8 knowledge that the alterations were occurring. He said that the  
9 audits had nothing to do with the aide records; that it only had  
10 to do with the nursing notes. He said he wanted the charts  
11 Medicaid-ready to prevent a frustrated auditor, which simply  
12 meant putting the records in, the aide records in date order.  
13 And he testified that he never told anyone to match the aide  
14 record to the plan of care. Because why would he need to do  
15 that? He thought they were billing by the aide records. You  
16 don't need to do that; the aide records would match billing.

17 He also testified that, although audits are important,  
18 he was only in the office for 30 to 40 minutes prior to the  
19 Clifton Gunderson audit and he bought some pizza for his  
20 employees.

21 Angela Perry also testified she never directed anyone  
22 to alter aide records and did not know that such alterations  
23 were occurring. And about the weekend before the Clifton  
24 Gunderson audit, she said that she sent everyone into a meeting  
25 about the audit, but she didn't go into the meeting herself. So



1 that's interesting. You've got Angela sending people in to a  
2 meeting about the audit, and you've got Wayne Perry just coming  
3 in and buying pizza, and apparently didn't direct anyone to do  
4 anything either, so you've got the two people who stand to lose  
5 the most from a bad audit, they're apparently people that care  
6 the least about the audit preparations.

7 Now, Angela Perry did, however, tell the employees  
8 that it was a mandatory weekend and that she expected them to be  
9 there and to put the time sheets in order to make everything  
10 Medicaid-ready. So let's again contrast that version of events  
11 with what else you heard at this trial.

12 In 2008, 2009, Betty Banks testified that Wayne Perry  
13 directed her to make the aide records match the plan of care.  
14 And in about 2008 or 2009, we have Sabrena Tabron, who came from  
15 Georgia to testify, and she testified that she saw Angela Perry  
16 get a phone call from Wayne Perry, couldn't hear what Wayne  
17 Perry said, but then after that telephone call, Angela Perry  
18 directed her to add time to aide records by matching the plan of  
19 care to the aide record.

20 Now, Ms. Tabron and Betty Banks were in marketing, and  
21 they both left the company in 2009, and yet you heard very  
22 similar testimony from each of them. And they corroborate  
23 everything else that follows.

24 Again, in 2010 Wayne Perry denied -- he sat on the  
25 witness stand and said he never told any employee to match the

1 aide records to the plan of care. If you recall, during his  
2 cross-examination I showed him these meeting minutes from the  
3 quality improvement meeting dated March 29th of 2010. If you go  
4 down to meeting minutes, most of the way down the page, Exhibit  
5 86, Mr. Perry says "There are externs from Everest, and they are  
6 matching the hours worked on the aide records to the plan of  
7 care hours." Again, I ask you, if you're billing by the aide  
8 records, why do you need to do this? Mr. Perry is explaining  
9 that he knows exactly what's going on, and that aide records are  
10 being matched to the plan of care hours.

11 We also called Jessica Smith and we showed you this  
12 audit. Jessica Smith, March 10th, 2010. And here she's doing  
13 exactly what Mr. Perry said and described in the meeting minutes  
14 from that very month. She told you she had the chart and she  
15 was looking at the plan of care, she was going through the time  
16 sheets and matching what was in the time sheets to the plan of  
17 care, and then after that -- we showed this to Wayne Perry, and  
18 he said I never saw this audit before, I did not know it was  
19 going on.

20 If you look at the first pages of Exhibit 24, again,  
21 we showed Mr. Perry this. Mr. Perry said I can't tell you why  
22 those two numbers don't match. Billing for 49 units and only 28  
23 units being in the chart. He said that this wasn't for billing,  
24 but yet recognized an ICN number is for billing.

25 Vernice Spain testified that this particular document

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1 was given to her by Angela Perry and that Angela Perry gave her  
2 the directive to get the billing down. And so Vernice Spain and  
3 the other staffing coordinators added time to the exact record  
4 that was being referenced in that document. Elsie Johnson,  
5 Exhibit 22A, there were 28 hours originally in the chart, and  
6 now there are 49.

7 Ladies and gentlemen, the only people who had anything  
8 to lose, the only ones, if this aide record isn't corrected, is  
9 Wayne and Angela Perry. The staffing coordinators didn't have  
10 to repay Medicaid if the aide record didn't match the billing.  
11 That wasn't their responsibility. The only person that had to  
12 repay Medicaid if these records didn't match was Wayne Perry.

13 Now, the only -- you also heard from Mary McKay, who  
14 was the aide who filled out this particular time sheet. And she  
15 testified she didn't get paid on May 4th, May 9th or May 10th,  
16 because those hours weren't marked when they turned in this time  
17 sheet. But the person who did get paid, as was demonstrated in  
18 the last exhibit, Exhibit 24, was the company.

19 Now, you heard a lot about the low margins related to  
20 Medicaid billing. But please ask yourselves, what is the margin  
21 when you bill for an hour of care but you don't have to pay an  
22 aide? It's a lot more than sixty cents an hour. And that's  
23 precisely how Wayne Perry was able to make over \$750,000 in one  
24 year.

25 Now, Wayne Perry was also the individual who hired

1 Allison Hunter-Evans. He paid her over -- he paid her \$45 an  
2 hour to audit his files, and he paid for her hotel  
3 accommodations. Wayne Perry wouldn't even admit that he asked  
4 Allison Hunter-Evans to obtain inside information from Medicaid.  
5 Allison Hunter-Evans is sending this email in Exhibit 75 to  
6 Wayne Perry on November 9th of 2010. She told you that this  
7 line here, "I'm having lunch tomorrow as previously talked  
8 about, so I should be able to share any knowledge that I gain  
9 with you when I arrive," that that was her telling him that she  
10 was going to have lunch with her friend from Medicaid and try to  
11 get information about the upcoming audits to give to him.

12 His response was "Be strong tomorrow." But when we  
13 talked, when I asked Wayne Perry about this on  
14 cross-examination, he didn't even know what "be strong tomorrow"  
15 is referring to.

16 Finally, you have the testimony about the weekend  
17 prior to the audit. And again, ladies and gentlemen, the only  
18 people, only people who had anything to lose related to this  
19 weekend were Wayne and Angela Perry.

20 You heard from JoAnn Hicks from Clifton Gunderson. If  
21 an aide record is insufficient, if it doesn't meet all of those  
22 elements, then it gets struck and they could very well cause a  
23 retraction. The staffing coordinators, the folks who work in  
24 medical records, they're not responsible for paying that money  
25 back to Medicaid. Mr. Perry was responsible for paying that

1 money back to Medicaid. And Wayne said that he didn't want to  
2 have to pay a single cent back if he didn't have to.

3           So on March 17th, 2012, Allison sent Angela Perry an  
4 email about preparing for the audit. Now, Allison sends it to  
5 Angie and says "Sorry I took so long to put a proposed game plan  
6 in place, but here it is." So why do they need a game plan in  
7 place if all they're doing is pulling the charts and putting the  
8 aide records in order? It's because Angela Perry knew that  
9 that's not the only thing that would be happening. If you check  
10 the second page of this email, right at the top to this email to  
11 Angela Perry it says "Check comments to ensure that they include  
12 observations of the recipient's physical and emotional  
13 condition, daily activities, and the recipient's responses to  
14 services rendered." But Angela claims they didn't instruct  
15 anyone to alter comments on aide records, and she had no  
16 knowledge that they would be reviewing comments. They were just  
17 going to be putting things in date order.

18           Now, she admitted that it took her all of 10 minutes  
19 to pull 10 charts and that she expected her staff to make the  
20 charts Medicaid-ready. But then she also testified that she  
21 came -- she knew staff was there Friday night, she was there  
22 Friday night, Saturday night, she was there Saturday night and  
23 Sunday after church. So it does not take three full days and  
24 nights to put 10 charts in order. You have the charts, ladies  
25 and gentlemen. You can take a look at them. It doesn't take

1 that long to put 10 charts, aide records, in order.

2 Now let's take a look at a couple examples of records  
3 that were altered that weekend. Medicaid was nice enough to  
4 give them a list of patients that they were going to look at,  
5 and you've got Ethelene Williams on that list. And this is  
6 Exhibit 80, but you can also look at Ethelene Williams' charts.  
7 Her chart's in evidence. But this is Page 1 of Exhibit 80.  
8 You've got the provider aide record, it's for Ethelene Williams,  
9 and you have comments that were made in the first hand writing,  
10 and then you have comments that were made in the second  
11 handwriting. "Family is supportive and patient responded well  
12 to care." Vernice Spain testified that she actually added that.  
13 And it matches precisely what the staffing coordinators were  
14 supposed to add in connection with Allison's email to Angela:  
15 Check comments to make sure that you've got the recipient's  
16 responses to services rendered. And what did Vernice Spain add?  
17 "Patient responded well to care."

18 Happened with Nellie Spence as well. The second  
19 handwriting, this is the third document in Exhibit 80, "Family  
20 support, responds well to care, no complaints of pain."

21 Now, these documents, these alterations to these  
22 documents have nothing to do with the staffing coordinators  
23 purportedly covering up their fraud. The only thing that these  
24 additional comments and the additional time and the forged  
25 signatures, the only things that those things do for these

1 records is prevent a retraction back to Medicaid. The only  
2 people who are benefiting, again, are Wayne and Angela Perry.  
3 And Wayne told you from the stand, I would not like to give one  
4 penny back.

5 Now, this weekend before the audit involved so many  
6 people, and we brought -- you heard from a number of witnesses  
7 who weren't testifying pursuant to immunity agreements or  
8 anything like that, who got up here and took the stand and  
9 testified about what was going on.

10 You heard from Sherrice Ford she testified that Angela  
11 Perry told her that she had to be there to fix the charts, no  
12 children, no church. And Ms. Ford testified that she would only  
13 identify errors on the aide records with sticky notes and did  
14 not alter the aide records because she knew that it was fraud to  
15 alter the aide records. And a month later, she was fired.

16 Renee Neighbors-Everson recalled that Wayne Perry told  
17 her to fix his charts; instructed her to go back and back-date  
18 her signature on the aide records to give the appearance that  
19 she had reviewed them when they came into the office. Ms.  
20 Everson testified that she had never signed in the RN spot  
21 except for that weekend prior to the audit. And Ms. Neighbors  
22 didn't benefit from these activities this weekend. She was  
23 already working two full-time jobs to support her family.

24 And Renita Jones' testimony was consistent as well.  
25 Ms. Jones spent the entire weekend adding comments. She said

1 that she had never signed in the RN spot except for this  
2 weekend. And Ms. Jones had a vivid recollection, a vivid  
3 recollection of being in Mr. Perry's office and having Mrs.  
4 Perry direct her to add comments and sign for Mary Jenkins' aide  
5 record. And indeed, if you look at the aide record, there's  
6 Renita Jones' signature. She told Ms. Perry she didn't want to  
7 do it, Ms. Jenkins wasn't her patient, and Ms. Perry told her to  
8 do it anyway.

9 Now, Artincy Hobbs. Artincy Hobbs testified that  
10 Angela Perry told her to give the aide records to Lillie Bryant  
11 because she was the artistic one. And she was right. You heard  
12 from Lillie Bryant, ladies and gentlemen. She was their  
13 receptionist. And she spent the entire weekend forging patient  
14 signatures on aide records. She was artistic. She had never  
15 done anything like this before. She testified that's all she  
16 did the entire weekend, was forge signatures on aide records.

17 When you are back there in the jury room, please ask  
18 yourselves, who benefits? Who benefits from this forgery? Who  
19 needed to prevent a retraction to Medicaid? The government  
20 submits that Wayne and Angela Perry's greed turned their  
21 receptionist into a forgerer.

22 Now, the documents corroborate the testimony of all  
23 the government witnesses and simply don't support the  
24 defendant's version of the facts. And in fact, some of the  
25 documents that the defendants submitted support the government's



1 version of events. Exhibit 32 -- and this is Defense  
2 Exhibit 32 -- it shows that Allison Hunter-Evans was reviewing  
3 comments, additional comments, Response to Care. But according  
4 to Wayne and Angela Perry, they thought she was just looking at  
5 nursing notes, she wasn't looking at the aide records. Their  
6 own documents support the government's -- that they absolutely  
7 knew exactly what was going on.

8 This was not a fraud committed on them, ladies and  
9 gentlemen. This was a fraud perpetrated by Wayne and Angela  
10 Perry to hide their plan of care billing, prevent retractions to  
11 Medicaid, and to frustrate the proper administration of the  
12 Medicaid program.

13 Now let's move on to talk about respite care. Wayne  
14 and Angela Perry both agree that respite services are for the  
15 benefit of the primary caregiver. They both testified that  
16 Wayne Perry would say "run the respite", but that just meant to  
17 call the patient and remind them to use respite hours, and they  
18 never expected that the company was submitting false respite  
19 claims.

20 Now, what did everybody else say? What does the  
21 evidence show? This is July 15th, 2010. Mr. Perry and Mr.  
22 Sears discussed expenses, and there is a three-prong approach:  
23 "Respite hours. Respite hours being used to cover a  
24 5,000-dollar a week deficit." The following week, August=4th, or  
25 the following month, "We are trying to work our way out of a

1 decrease in reimbursement. Increasing respite is a short-term  
2 solution." This is consistent with what you heard from Betty  
3 Banks and Renee Neighbors. Betty Banks told you that Wayne  
4 Perry referred to as "money just sitting there." And Renee  
5 Neighbors said that he referred to it as his respite, not a  
6 patient's respite.

7 Now, at the beginning of the case, Dee Lindsey  
8 testified that she had already entered the Medicaid billing for  
9 the week and that she heard -- overheard Angela Perry instruct  
10 the staffing coordinators that Wayne needed another \$40,000 and  
11 that the staffing coordinators falsified respite sheets, and she  
12 billed them. And ladies and gentlemen, that is what running the  
13 respite is all about. What part of the phrase "run the respite"  
14 and "burn the respite" suggests that we should only bill respite  
15 in the appropriate way? To run something is to run it down or  
16 run it out. To burn something is to destroy it. What part of  
17 those instructions suggest, "Please call the patient, remind  
18 them to use respite care, and then wait for a legitimate request  
19 from the primary caregiver and go ahead and follow through with  
20 that"?

21 Wayne and Angela Perry gave the staffing coordinators  
22 vague instructions, made them feel like their jobs were in  
23 jeopardy if they didn't meet their quotas, and then let them  
24 take care of everything else. And that's exactly what they did.

25 Take a look at Exhibit 6. Government Exhibit 6. In

1 2009 and 2010, June was always one of the lowest months.  
2 Approximately \$8,000 of respite. And it always spiked at the  
3 end of the calendar year when the respite cycle ended. But what  
4 happened when there was a change in the respite billing cycle?  
5 All of a sudden, June of 2011 becomes the highest month.  
6 \$240,000 that month alone. This spike is because Wayne and  
7 Angela Perry ordered employees to run it up at the end of the  
8 billing cycle, and they did.

9           Let's make something very, very clear: We believe  
10 that we've proven beyond a reasonable doubt that both Wayne and  
11 Angela Perry knew and directed the fraudulent billing practices  
12 at Community Personal Care. However, you can also, as an  
13 alternative theory of liability, conclude that these defendants  
14 acted knowingly if you believe that they deliberately closed  
15 their eyes to what otherwise would have been obvious. It's  
16 called willful blindness, and it's the alternative theory of  
17 liability in this case. The law provides that you don't get to  
18 stick your head in the sand like an ostrich while everybody else  
19 does bad things, and you watch your respite go up to, balloon up  
20 to \$240,000, it clearly indicated that something inappropriate  
21 was going on, and yet just sit back and, with your eyes closed,  
22 reap the benefits. Mr. Perry and Mrs. Perry were not running  
23 Bank of America. This was a small company. They had their  
24 offices all on one floor. Yet they would have you believe that  
25 for four years they were blissfully unaware that anything was

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1 going on. They were unaware of the plan of care billing. They  
2 were unaware that false respite sheets were being made up to  
3 increase their respite to \$240,000 a month. Unaware of the  
4 massive alteration of records going on at their company. You --  
5 under the law, actual knowledge and deliberate or conscious  
6 avoidance of knowledge are the same thing. And that is true for  
7 all of the charges in this case.

8 Now, throughout this trial, Wayne and Angela Perry  
9 have blamed two staffing coordinators, Sarina Freeman and  
10 Vernice Spain, for the fraud in this case. Ladies and  
11 gentlemen, we submit that's a blatant attempt at misdirection.  
12 They're trying to keep you focused on Vernice Spain and Sarina  
13 Freeman to keep the focus off the real perpetrators in this  
14 case. Because the fraud is so much bigger than two staffing  
15 coordinators.

16 First, Sarina Freeman and Vernice Spain did not bill  
17 Medicaid and had no involvement whatsoever in plan of care  
18 billing.

19 Second, Sarina Freeman and Vernice Spain didn't  
20 orchestrate the alteration party prior to Clifton Gunderson  
21 coming in. They had absolutely no authority over anyone in that  
22 room. They weren't paying them. They couldn't require Sherrice  
23 Ford, Renee Neighbors-Everson to be there. Defense witness  
24 Shameka Copeland testified she was there and altered records.  
25 She didn't report to Sarina Freeman. And Allison Hunter-Evans,

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1 Sarina Freeman didn't pay her, the defendant paid her. \$45 an  
2 hour. She wasn't emailing with her prior to the audit. That  
3 was Angela. These weren't -- this wasn't Sarina Freeman and  
4 Vernice Spain conspiring to alter records on their own.

5 And yes, Sarina Freeman and Vernice Spain and Tamika  
6 Nichols ran the respite and got paid for false respite sheets  
7 that they didn't work. And what they presented to you, ladies  
8 and gentlemen, is five months of bonus checks between July 2012  
9 and November of 2012. We're talking about a fraudulent scheme  
10 that ran from 2009 through 2012. And their defense is that his  
11 staffing coordinators received some bonus checks for the last  
12 five months of that scheme.

13 Wayne Perry and Angela Perry knew exactly who Sarina  
14 Freeman was when she worked for them. Nurses complained about  
15 her. They said she was unprofessional and was costing him  
16 clients and aides. Ask yourselves why. Why would a man who  
17 prides himself on running the most professional company he  
18 possibly can would keep someone who his nurses were complaining  
19 about as being unprofessional, who was costing him money?  
20 Because she was doing his dirty work, ladies and gentlemen.  
21 Sarina Freeman was keeping Wayne Perry's respite billing high,  
22 she altered his business records, she did what he wanted her to  
23 do. And then after the search warrant, she became his  
24 scapegoat.

25 I want to talk a little bit about Angela Perry. And

1 Angela Perry knew -- Angela Perry's primary defense to this case  
2 has been to cast herself as the executive gofer with no real  
3 involvement in the business. And instead of overseeing the  
4 staffing coordinators, which is what everyone prior to her had  
5 testified to, she suddenly became the liaison between them and  
6 the nurses. She labeled herself as an executive gofer, but this  
7 doesn't match up with the evidence in the case. Angela Perry  
8 was not a 1950's secretary at a company referring to her husband  
9 as "Mr. Perry". They lived together. And they worked together  
10 running this company. She wasn't picking up Mr. Perry's dry  
11 cleaning and taking dictation at meetings. Jean Watson was  
12 taking dictation at meetings.

13           This is a meeting that Angela Perry attended. Angela  
14 Perry's involvement in this meeting was her suggestion to cut  
15 Lillie Bryant's salary by three dollars an hour. And she  
16 certainly had the authority to require the entire staff to work  
17 prior to the Clifton Gunderson audit. She told you she told the  
18 staff that it was a mandatory weekend. And they didn't tell her  
19 no you know you're on executive gofer, you don't have any  
20 authority over me, I'm not going to show up. No. Everybody  
21 showed up, and they showed up at her request.

22           Now, you heard Angela Perry's friends and family  
23 testify about her, and I have no doubt that their testimony was  
24 heartfelt and truthful. But people sometimes make horrible,  
25 horrible choices, particularly when they allow their judgment to

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1 be guided by greed. Angela Perry is here today because of the  
2 choices that she made. She became a part of a conspiracy to  
3 defraud Medicaid and to alter records and to cover up the fraud,  
4 and she is accountable, she's accountable for those choices the  
5 same way that Allison Hunter-Evans was accountable.

6 No one is suggesting that Angela Perry was the leader  
7 of this conspiracy. Wayne Perry controlled that company.  
8 There's no doubt about that. But, just like Allison  
9 Hunter-Evans, Angela Perry knew the purpose of this billing  
10 scheme. She participated in it. She directed the alteration of  
11 records, and she profited from it.

12 Allison Hunter-Evans told you she worked at this  
13 company on weekends. She participated in this scheme for two  
14 and a half years and got paid approximately \$25,000 for her part  
15 in this scheme. She pleaded guilty to a federal felony and  
16 accepted responsibility for what she did. Angela Perry  
17 participated in this scheme for four years. Four years. And  
18 she reaped the majority of the benefits from the Medicaid fraud.  
19 And yet she testified that she didn't have any idea that any of  
20 it was going on at the company where she worked every single  
21 day.

22 To conclude, ladies and gentlemen, Wayne Perry, he was  
23 right: In our judicial system, defendants are innocent.  
24 They're innocent until proven guilty. And that is absolutely  
25 true. And over the last three weeks, Wayne and Angela Perry

1 have had a fair trial. You all have been so attentive, you've  
2 listened to this evidence, you've looked at the documents, and  
3 you've watched each witness testify, and you, you and only you,  
4 get to decide who sat in that chair and who told you the truth.  
5 And one of the simplest ways of answering the question of  
6 whether this was a fraud perpetrated by them or on them is to  
7 follow the money. Who benefited from this scheme? What have  
8 you heard over the last three weeks? You heard Artincy Hobbs  
9 got a Coach purse that she returned. You heard Deborah Scoggins  
10 got clothes for her grandbaby. You heard Renita Jones got a  
11 carton of cigarettes from another aide. Sherrice Ford, Lillie  
12 Bryant, Renee Neighbors-Everson got nothing. They got nothing  
13 except possibly the pizza that Wayne brought to the Clifton  
14 Gunderson audit meeting.

15 Vernice Spain, the records that the defendants put in,  
16 she got 35 -- after taxes, she got \$35,000. Sarina Freeman got  
17 \$25,000. Tamika Nichols got \$9,000, all in 2012.

18 Wayne Perry? Wayne Perry got \$769,000 in 2011 alone.  
19 You see, to believe Wayne and Angela Perry and what they said  
20 from the witness stand, you have to set aside all rational  
21 thought and common sense. Wayne Perry testified that his  
22 employees were working as a team to defraud me, and Medicaid,  
23 and everybody else. You have to believe that for four years  
24 four years, Wayne and Angela Perry were enriched through  
25 Medicaid fraud, but somehow had no idea that it was going on;



1 that somehow for four years the staffing coordinators, the  
2 nurses, the independent contractor that the defendant hired and  
3 paid for, and even his friend, James Sears, his friend for 20  
4 years, the chief financial officer of his company, they all  
5 conspired to execute a billing scheme to defraud Medicaid and  
6 then altered the documents to cover up their fraud. All on  
7 their own. And it's amazing that they could pull this off right  
8 under the defendants' noses. They never even suspected that it  
9 was going on.

10 I tell you, defendants' employees have to be the  
11 nicest people on the planet, to engage in all of this fraud, put  
12 themselves in harm's way, to enrich Wayne and Angela Perry.

13 He was victimized, ladies and gentlemen, to the tune  
14 of three quarters of a million dollars.

15 And then, somehow, after the federal search warrant,  
16 all of these people got together to get their story straight to  
17 get up on the stand and lie to you all. Betty Banks and Sabrena  
18 Tabron, who left defendant's employ in 2009; Dee Lindsey who  
19 left in 2010; Lillie Bryant, Sherrice Ford, Renee  
20 Neighbors-Everson, Linda Hanson who left in 2011, and even James  
21 Sears, who continued to assist Wayne Perry in wrapping up the  
22 business, all coordinated their testimony somehow to stay  
23 consistent with each other. They all agreed to lie and place  
24 the blame on Wayne Perry and Angela Perry.

25 Ladies and gentlemen, only in Wayne's World does that

1 twisted explanation make any sense. Here, we submit the  
2 simplest explanation and the one supported by all the testimony  
3 and documentary evidence you have in this case is that Community  
4 Personal Care operated exactly, exactly how the defendants  
5 wanted it operated. And for four years, the defendants  
6 exploited the Medicaid system, they exploited their employees,  
7 and they exploited their patients. This was his respite, and  
8 the patients were nothing but a Medicaid number. A means to an  
9 end.

10 The government's proven beyond a reasonable doubt that  
11 the Medicaid fraud perpetrated in this case was done by the two  
12 people that sit in front of you: Wayne and Angela Perry. Hold  
13 them accountable. We ask you to return a verdict of guilty on  
14 all counts for both.

15 THE COURT: Ladies and gentlemen of the jury, I think  
16 from a technical standpoint we may have to make a switch, and so  
17 rather than just sitting here in the quiet while that's done,  
18 I'm going to let you all take a brief -- step back into the jury  
19 room, and Officer Connolly will check with me in about five  
20 minutes or so.

21 (Jury left the courtroom.)

22 (Recess taken from 12:46 p.m. to 12:58 p.m.)

23 THE COURT: Mr. Davis, are you all set up?

24 MR. DAVIS: Yes, Your Honor. Thanks.

25 THE COURT: Okay. We ready to bring the jury in?

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1 MR. DAVIS: Yes.

2 MR. SACKS: Your Honor, I just have one question. At  
3 the conclusion of his argument would you give us about a  
4 five-minute break just to --

5 THE COURT: You have to do the same switch?

6 MR. SACKS: I don't have to switch, but I think I may  
7 have to use the facilities.

8 THE COURT: Well, you're pretty -- you have good  
9 anticipation skills, apparently. All right. Well, I'll look at  
10 you and see where you are.

11 MR. SACKS: All right, sir.

12 THE COURT: All right. Let's bring the jury in.

13 (Jury entered the courtroom.)

14 THE COURT: Everyone can be seated.

15 Mr. Davis?

16 MR. DAVIS: Wayne Perry is innocent of these crimes.  
17 It is surely true that Mr. Perry did a lot of things wrong. He  
18 neglected the business that he had worked so hard to build. His  
19 policies and procedures he actually believed in were  
20 ineffectual. And he was fooled into believing that several of  
21 his mid-level employees and administrative staff were honest and  
22 competent. But Wayne Perry is no criminal. He did not execute  
23 a scheme to defraud the Medicaid system. He didn't commit and  
24 didn't intend the crimes alleged in the indictment. As Mr.  
25 Broughton told you at the beginning of the case, the wrong

1 people are on trial before you. The only real criminals in this  
2 case got off scot-free. They were given immunity by the  
3 government in exchange for testifying.

4 Now, what are the issues Carolina in this case?  
5 You've heard about everything under the sun about Wayne Perry.  
6 They have attacked him every possible way they can to take him  
7 down. But the core of the government's case is three things:

8 They say that Wayne Perry executed a scheme to defraud  
9 Medicaid by billing by the plan of care instead of by the aide's  
10 actual time.

11 They say that he executed a scheme to defraud Medicaid  
12 by billing for respite hours that were either improper or were  
13 entirely fictitious.

14 And then say that Mr. Perry altered and forged his  
15 company's patient records with the intent to impede the Clifton  
16 Gunderson audit.

17 Now, Wayne Perry's defense is very simple: He did not  
18 do these things, and he did not intend these things, and there's  
19 no reliable evidence, none, that he did.

20 Let's talk about presumption of innocence. The  
21 evidence has proved that Mr. Perry did not do and did not intend  
22 the frauds in this indictment. But you don't need to go nearly  
23 that far in order to find Wayne Perry not guilty. The evidence  
24 need not prove that Wayne Perry is innocent in order for you to  
25 acquit in this case. That's because of the presumption of

1 innocence. Presumption of innocence protects every member of  
2 our community. The presumption is the foundation of your work  
3 as jurors. You must be sure that Mr. Wayne Perry, like every  
4 person accused of a crime in this country, gets the full measure  
5 of the presumption of innocence. You must continue to presume  
6 him innocent until and unless you decide the government has met  
7 its very high burden of proof.

8           What about the burden of proof? In one way, your job  
9 as a juror is very difficult, but in another it's really very  
10 easy. It's difficult because you're given a responsibility that  
11 almost no one ever has. You hold the fate of these two people  
12 in your hand. You will decide that fate. That's a grave  
13 responsibility, which would be difficult for anyone.

14           But how is it easy? It's easy because you're not  
15 being asked to write a report on what actually happened here.  
16 You don't have to determine exactly and finally what the facts  
17 were. You don't even have to decide if Wayne Perry is innocent.  
18 You're only asked to decide really one question, and that is,  
19 whether the government has convinced you beyond a reasonable  
20 doubt that Mr. Perry committed these crimes. That's the  
21 question. Did they prove it? Did they prove it? If you're  
22 uncertain, if you feel like you aren't sure, if there are  
23 unanswered questions that keep you from feeling confident about  
24 what happened here and about what was actually intended here,  
25 your work is done. It's easy. Mr. Perry is not guilty. That's

1 what's meant by the burden of proof.

2 In our system, the burden lies with the government.

3 We don't require any person to prove his innocence. Our system

4 insists that, before the government can take away a person's

5 liberty, it must bear the entire burden of proving the

6 accusations. That means that if any of you have questions about

7 important things that happened at Community Personal Care, you

8 can't look to Mr. Perry for answers. It was the government's

9 responsibility to answer those questions for you. And if you

10 wanted to hear, say, from Deborah Scoggins, the payroll clerk

11 who worked every week with Artincy Hobbs but did not testify, or

12 if you wanted to hear from Sandra Humphries, a long-time

13 registered nurse who was one of the cooperating sources for the

14 original search warrant, but didn't testify, you can't look to

15 Mr. Perry for the absence of that information. Look to the

16 government. You may not hold your uncertainties against a

17 defendant in a case. And that's what it means to say the burden

18 of proof is entirely on the government.

19 Another one more basic principle of our system is that

20 the government must prove each of the elements of each offense

21 beyond a reasonable doubt. In a criminal case, a jury might

22 decide that the accused probably committed the offense. But

23 that wouldn't be enough. The jury might think that the

24 defendant likely committed the offense. Not enough there,

25 either. The jury might be pretty sure that the defendant

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1 committed the offense. Not good enough, either. In all of  
2 those scenarios, there's only one right verdict. The jury must  
3 find the defendant not guilty of the charges. The jury can only  
4 return a verdict of guilty if you have no reasonable doubts.

5         The search for reasons to doubt often begins with a  
6 question. Is the government's evidence reliable? Is it  
7 reliable? In this case, in this amazing case, almost none of  
8 the government's evidence is reliable. This case spanned four  
9 years. This is a supposed scheme that a CEO of a company is  
10 executing every day of his life for four years, but from that  
11 time frame the government has not produced any of these things:  
12 An undercover meeting, let's say, where Wayne Perry meets with  
13 an undercover and talks about fraud; a videotape or a photograph  
14 of Wayne Perry doing a crime; a tape-recorded phone call or a  
15 tape-recorded conversation involving Wayne Perry any document,  
16 any document at all, showing Wayne Perry's knowledge, intent or  
17 involvement in fraud. And most amazingly at all, no text, no  
18 email, except the two we've seen, in which Wayne Perry  
19 communicates with a fellow conspirator. And so that even though  
20 the FBI seized all of his emails and took four computers out of  
21 that business, after a four-year scheme, there's not a single  
22 email in front of you that shows that Mr. Perry intended or was  
23 directed or committing or involved in fraud. That's amazing,  
24 ladies and gentlemen. That's amazing.

25         So much of the government's evidence is the opposite

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1 of reliable. A lot of it is just shreds of supposed  
2 conversations, many of them five or six years ago, for which no  
3 one was present and that weren't witnessed by anyone, and that  
4 aren't corroborated in any way, and that aren't even further  
5 investigated by the government.

6 So much of the evidence, too, comes from the mouths of  
7 the immunized. Did you, like me, lose count of the number of  
8 witnesses the government immunized? You can say a lot of things  
9 about Wayne Perry, but I'll say this: When Wayne Perry actually  
10 discovered fraud at his business, he fired people. When the  
11 government discovered fraud, they handed out immunity.

12 All the patient records you've seen were selected.  
13 The FBI seized over 500 patient files. This indictment involves  
14 11 named patients. These files are the very best evidence the  
15 government has. The very best. They don't prove that Wayne  
16 Perry committed a single crime.

17 And some of the evidence they put in front of you is  
18 just disgraceful. Like Sarina Freeman said she didn't steal any  
19 money. No money was stolen. Now, is that evidence reliable?  
20 That's what I mean about reliable. Or are there reasons to  
21 doubt? Reliable evidence is evidence that you would trust in  
22 making a consequential decision in your own life. Imagine a  
23 room to which were invited all the witnesses in the case. All  
24 of the government's witnesses who came in and all of Wayne  
25 Perry's witnesses. And you're sort of sizing them up. Imagine



1 comparing the witnesses who testified for Wayne Perry: Four  
2 nurses who are women of impeccable professionalism and  
3 character, and James Sears and Shirley Davis, and a lot of other  
4 people who know Wayne Perry really well. And then you look over  
5 at the government's lineup of thieves, cloaked in a blanket of  
6 immunity.

7           The judge instructed you that such persons, when  
8 you're dealing with their testimony, it's always to be received  
9 with caution and to be considered with great care. There's a  
10 reason for that.

11           Now the government's asking you to rely on the  
12 uncorroborated word of those same persons to convict Wayne Perry  
13 of these felonies. Most of you wouldn't trust the government's  
14 witnesses in the same room with your own checkbook. But if  
15 that's so, how can you rely on them to be the reason for a  
16 guilty verdict against Wayne Perry? You can't.

17           Once again, when you're deliberating, we urge you to  
18 carefully and thoughtfully consider all of this evidence. Take  
19 your time. You and only you will decide this case. If you rush  
20 to judgment and if you wrongly return a guilty verdict, you  
21 can't later take it back. So consider all the reasons to doubt  
22 in this case. Leave no stone unturned as you begin your  
23 collective search for whether there are reasons to doubt what  
24 the government is telling you.

25           I want to talk just about one other legal principle,

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1 and that's about the charges other than the conspiracy charges,  
2 the so-called substantive charges, Counts 2 through 13 and 15 to  
3 18. Because when you think about the evidence and when you  
4 think about what the law says, there's no question that  
5 reasonable doubt exists. Remember that every crime requires  
6 certain elements, including a particular act and a particular  
7 mental state, an intent, that accompanies it. For a crime to  
8 occur, both the act and the criminal intent must be proved  
9 beyond a reasonable doubt.

10           Nearly all of these substantive charges involve the  
11 intentional filing of a false claim to Medicaid. This is about  
12 billing entries. This is about someone typing on a machine and  
13 sending information to Medicaid. Notice that the issue in the  
14 counts is not what's on a DMAS-90 or any other record anywhere.  
15 It's about the billing entry itself that goes to Medicaid. Each  
16 entry presumably involved a number of hours that was sent to  
17 Medicaid for a particular service, and the government says that  
18 each of those electronic claims is a separate crime.

19           Now you may still be wondering how and why Wayne Perry  
20 could ever possibly be convicted of committing those crimes,  
21 since there's no evidence that he was there or that he knew  
22 about them or that he intended them or directed them. As the  
23 judge instructed you, though, the law does permit, in certain  
24 very particular circumstances, that one person can be held  
25 liable for a different person's crimes. But the government

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2503

1 hasn't proved those circumstances here at all. It isn't even  
2 close.

3 Now, why do I say that? Well, at least two reasons.  
4 The first is, the government has to show that the particular  
5 claim was false. And here, that means that the hours billed  
6 were not worked. Otherwise the claim to Medicaid isn't false.  
7 The government hasn't shown those things. What they have shown  
8 at most is that a particular patient chart which was seized at  
9 the end of November 2012 did not contain a DMAS-90 time sheet  
10 that supported the amount of hours billed.

11 By the way, a lot of those charts -- or some of those  
12 charts -- they showed you had not just one week or one day, but  
13 months missing for a person getting regular personal care. Now,  
14 what does that tell you about whether they got all the charts?

15 But what they haven't shown is that those hours  
16 claimed were not worked. The absence of a time sheet isn't  
17 proof beyond a reasonable doubt. Particularly when personal  
18 care is provided to these people who really needed it and were  
19 long-term patients and got care over many years every day, every  
20 week, and needed that care to survive. Time sheets can get lost  
21 or misplaced or never filled out correctly ever. Or thinned.  
22 Or never filed. But the absence of a time sheet is only that:  
23 There's no time sheet.

24 In a criminal case, the government has to prove what  
25 actually happened. It has to prove it beyond a reasonable

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2504

1 doubt. Here, the government didn't even bother. They didn't  
2 even bother. Look at counts 6 through 9. The government  
3 charges in Counts 6 through 9 -- there is their charge -- what  
4 they're saying is in Count 6 through 9 there's a particular  
5 electronic claim being made on a particular date, and it has to  
6 do with dates of service, and that claim was false because the  
7 recipient did not receive such respite care services. That's  
8 what they're saying, right in the indictment.

9 Well, think about, these are long-term, disabled  
10 patients; long-time people who every day were taken care of by  
11 Community Personal Care. Robert Gould, Emma Willard, Joseph  
12 Dickerson, Elsie Johnson. Now, did Community Personal Care  
13 simply fail to show up? And if they did, wouldn't someone  
14 remember that, and wouldn't someone have fired the company ASAP?  
15 But no one testified that the care wasn't provided. No one said  
16 that. And the evidence shows that, for each of them, the  
17 registered nurse visited these people regularly every 30 days,  
18 some of them, and there was no issue raised about a break of  
19 service.

20 Elsie Johnson, for instance. Supposedly there was no  
21 personal care at all for Elsie from January 3rd to January 9th.  
22 But Deedra Davis-Hussein, a good and capable nurse, testified  
23 that Elsie Johnson had a good, attentive personal care aide;  
24 that she visited Elsie in December of 2010 and again in February  
25 of 2011, and there was never an issue about a break in service

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2505

1 for a whole week. That would you have been a big issue with  
2 Wanda McNair and Mary McKay.

3 What about Robert Gould? The government says he  
4 didn't receive a whole month of care in October of 2009. He was  
5 getting 47 hours of care that he needed, and the government  
6 says, well, we're just putting it in our indictment because  
7 there was no time sheet found when we did our search warrant,  
8 and so it has to be a false claim beyond a reasonable doubt.  
9 And then you actually talk to the nurse who knows these people.  
10 And her nursing notes show that on October 1st, 2009, which is  
11 the first day this started, Deedra is with Robert Gould,  
12 visiting him. And then she returns on November 3rd, 2009 -- you  
13 can see all these files, check it out -- for other issues, and  
14 there's no issue about Robert Gould not receiving care for an  
15 entire month. But the government doesn't care about that.  
16 Government isn't going to work any harder than it has here. And  
17 they're going to throw it in front of you and say, oh, the  
18 jury's going to say, well, there's no sheets, and so we've  
19 proved it.

20 Didn't prove it. They didn't prove it at all.

21 The same is true for some of the respite hours. For  
22 Elizabeth Mullen, the government says in Count 10 there's a  
23 false electronic claim for respite services for April 13th to  
24 April 19th, but there was no evidence of what actually happened.  
25 And Michael Mullen specifically said, if Elizabeth Mullen

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1 requested respite hours, Michael might not have known, and he  
2 did not know if Community Personal Care gave respite care to  
3 Elizabeth Mullen on the week of April 13th to April 19th.  
4 Ladies and gentlemen, that's not proof beyond a reasonable  
5 doubt.

6 Deedra visited Elizabeth Mullen on April 20th, 2009,  
7 she created a note, she believed that Michael Mullen was  
8 present, and there was nothing about a break in service or  
9 problems that week. And so on.

10 The government threw this case in front of you. They  
11 didn't even talk to the nurses, they didn't even look at what  
12 the nurses' own notes showed about how these people were being  
13 taken care of. They just put these charges in front of you,  
14 it's all fraud, Mr. Wayne Perry's guilty, rack it up.

15 So that's one thing. They have to show the claim is  
16 false. They have to show the care wasn't provided, and they  
17 didn't do it.

18 The other thing they have to do is, for the  
19 substantive counts, the government has to show that either the  
20 person who filed the claim or someone who specifically caused  
21 that claim had the necessary criminal intent, and did not act  
22 out of mistake or carelessness or accident or just a misstep.  
23 In other words, an electronic claim to Medicaid, even if it has  
24 the wrong number of hours, is not a crime unless the person  
25 making the claim or someone causing that person to act acted

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2507

1 willfully, acted with the intent to commit a crime. In this  
2 case, once again the government doesn't even care. There's no  
3 evidence at all of the billing person's intent; no evidence that  
4 in filing the particular electronic claim that the billing  
5 person deliberately broke the law. There's no evidence that any  
6 other person with specific intent caused these billings.

7           Neither of the two billing witnesses the government  
8 called, Artincy Hobbs or Dee Lindsey, testified about their  
9 intent about any of these supposed claims. They weren't even  
10 asked about them. If Artincy Hobbs was the billing person and  
11 if she intentionally submitted false claims on these occasions,  
12 you might expect a pink notebook -- which you should look at  
13 very carefully -- you might expect that pink notebook would show  
14 that she knew that personal care had not been provided, but she  
15 sent in a false claim anyway. But you can look at it. For  
16 Joseph Dickerson in early December 2010, for instance, it  
17 doesn't show that Joseph Dickerson wasn't receiving care and so  
18 I'm going to file a false claim. It doesn't show that?

19           Now, the government also has to show, to convict Wayne  
20 Perry of these substantive crimes, that the person making the  
21 claim was in a conspiracy with Wayne Perry, or that he was  
22 somehow causing that person to act. And there's more on that in  
23 a bit. But the important point for now is just that, to prove  
24 these substantive crimes, the government has to show beyond a  
25 reasonable doubt each of the claims submitted to Medicaid was

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1 actually false, and that someone had the intent in filing it to  
2 commit a crime. For the substantive counts, the government  
3 hasn't come close to proving those things, and for that reason  
4 alone, Mr. Wayne Perry is entitled to a not-guilty verdict on  
5 every substantive count.

6 Let's talk about the facts. There really, as I said,  
7 there's three things at issue here: Billing by the plan of  
8 care, the Clifton Gunderson audit, and respite. Let's start  
9 with billing by the plan of care.

10 The government's theory is that Wayne Perry  
11 deliberately executed a scheme to defraud Medicaid by billing by  
12 the plan of care instead of by actual hours. Now, I'll start  
13 this by asking us to define our terms. What does it mean to  
14 bill by the plan of care? What is a plan of care? Well, it's a  
15 schedule. It's a starting point. It's an expectation. For  
16 these people, it's a medical necessity. And it's something that  
17 the aides followed. If they came an hour late, they worked an  
18 hour later. The goal and the mandate was that these patients  
19 received all their care all the time. Now, of course that  
20 doesn't happen always, but it happens in the routine almost all  
21 the time. Elsie Johnson need someone there seven hours a day.

22 Now, the government would have you believe that at  
23 some point -- so when we talk about billing to the plan of care,  
24 I guess that means, it means to never vary, never, from the plan  
25 of care hours, and to always ignore any other information about



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2509

1 a deviation. So never vary, and always ignore the other  
2 information.

3           The government would have you believe that, at some  
4 point, Wayne Perry made a calculated judgment that some amount  
5 of increased revenue that comes from billing for a few  
6 additional personal care hours each week was a crime worth  
7 committing and a risk worth taking. And so, they say, Wayne  
8 Perry deliberately chose and deliberately intended to ignore  
9 information about actual hours worked, and instead, to routinely  
10 file claims based only on the plan of care. And at the same  
11 time, he was so cunning and devious that he hired employees and  
12 he made administrative employees spend a great deal of time  
13 determining and tracking and documenting and communicating the  
14 hours that were actually worked and the deviations, but that was  
15 all a big, fake charade. Because he was always going to bill by  
16 the plan of care anyway.

17           Now, think about that theory. What reasonable doubts  
18 come to mind? Well, first of all, if Wayne Perry intended his  
19 billing clerk to only bill by the plan of care and to ignore  
20 information about actual hours worked, he sure spent a whole lot  
21 of time having his employees trying to verify the true hours  
22 worked. Remember how operations actually worked in the  
23 administrative office at Community Personal Care. There's a  
24 Roll Call 365 days a year. This is unusual. Louis Wilson said  
25 most agencies don't even do this. This, Nurse Wilson said, this

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2510

1 is a quality assurance measure. The staffing coordinators were  
2 asked to call patients on a daily basis to see if the aide had  
3 arrived. Every personal care aide understood that the patient  
4 would be called that day to see if the aide had arrived and to  
5 verify that.

6 Well, then there was the nurse's white board. The  
7 government showed it in its closing. That was used to keep  
8 track of scheduling and patients entering the hospital and  
9 refusals of care. Linda Hanson told you the information on the  
10 staff white board was what went in the in-house communications  
11 for billing purposes. And Louis Wilson said I looked at the  
12 white board daily, its purpose was to back out days that didn't  
13 need to be billed.

14 So there's a Roll Call. There is a white board.  
15 There is a receipt by the staffing coordinators, who are the  
16 managers of the office, who spend their whole morning every  
17 Monday receiving these sheets. Tamika Nichols told you that she  
18 made sure the aides had the signatures, the hours worked were  
19 correct, they weren't done in red ink. She's doing quality  
20 control every Monday morning to get those time sheets and to  
21 look at them and verify them.

22 Shemeka Copeland said the aides turned in the time  
23 sheets on Mondays to staffing coordinators. The staffing  
24 coordinators checked for errors, dates, signatures, they  
25 submitted the DMAS-90s and the cover sheets, and then they would

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1 go to HR and to payroll and to billing.

2 And then every Tuesday night, Artincy Hobbs  
3 and Deborah Scoggins would meet late in the day and stay often  
4 into the early evening with a wire basket, two chairs pulled up  
5 to a desk, and every DMAS-90 turned in that week. They would be  
6 there looking at the cover sheets -- which you've never seen in  
7 this case -- but going through the DMAS-90s, compiling the  
8 information. That's what Artincy Hobbs was doing, sometimes  
9 getting paid overtime to do, on Tuesday nights.

10 Now, she's a full-time employee, whose only real job  
11 is to bill Medicaid, and she's spending a half day on Tuesdays  
12 with her hands all over DMAS-90s. She's finalizing the billing  
13 on Thursdays; on Fridays she's going over the remits to assure  
14 that she didn't miss anything. If Wayne Perry meant to bill  
15 only by the plan of care, he sure didn't need Artincy Hobbs, and  
16 he sure didn't need all this other stuff.

17 Well, what was the other stuff? Well, there's the  
18 pink notebook. And the government didn't really explain that.  
19 But why does this document exist? It's so easy if you just bill  
20 by the plan of care once a week that has a permanent,  
21 unchanging, unvarying number on it, and that's all you do. But  
22 Artincy Hobbs is spending a good bit of her time painstakingly  
23 going through and documenting the days when someone in the  
24 hospital or someone's deviating. It's right here. Why is that?

25 And then the interoffice communication. One of them

1 was just stuck in this book. One of the most important  
2 documents in this case is just stuck in this book. Here it is.  
3 It's an in-house communication form. And look at the date.  
4 It's dated November 26th, 2012. That was three days before the  
5 FBI showed up and took everything away. It's at the very end of  
6 the life and death of Community Personal Care. And what it  
7 shows is that Shameka Copeland, one of the staffing  
8 coordinators, is sending to Artincy -- Artincy Hobbs, the  
9 billing clerk, that's what she does -- this list, this careful  
10 list of the various people who refused care, different things,  
11 all that happened in that week. And there it is, just stuck in  
12 the book. Now, why is that?

13           Retractions. If you bill by the plan of care you  
14 never retract anything, because it's always the same. You never  
15 vary, and you ignore all the other information. But Community  
16 Personal Care in 2000 alone -- government of course didn't study  
17 this, but -- retraction, \$106,000 before adjustments in 2011  
18 alone. Now, why are they retracting, correcting, trying to get  
19 it right, if all we're doing is billing by the plan of care?

20           Ladies and gentlemen, there is a whole lot going on at  
21 this place that's about tracking and verifying what actually  
22 happened and sending it to Artincy Hobbs, whose only job is to  
23 bill Medicaid. All of these time-consuming operations were  
24 totally unnecessary if Mr. Wayne Perry actually intended to bill  
25 only by the plan of care and to ignore the information. So

1 that's one thing. There's a whole lot going on here about  
2 actuality.

3 But there's another thing that's more important, and  
4 that is the government's own witnesses: Artincy Hobbs and Dee  
5 Lindsey. What did they say about whether the only thing they  
6 did was one thing, bill by the plan of care? And the only thing  
7 they did was ignore everything else? Well, that's not what they  
8 said.

9 Dee Lindsey, Dee Lindsey, who actually did this, she  
10 said billing was adjusted from in-house communications. She  
11 said those communications would tell her if the patient was in  
12 the hospital or didn't show up or if the patient didn't receive  
13 care. Dee Lindsey said if she found out individual adjustments  
14 needed to be made, she made the adjustments. The plan of care  
15 was the starting point, not the goal.

16 Dee Lindsey said she also kept records of patients for  
17 which changes or retractions were needed. She said that Wayne  
18 Perry would direct her, Dee Lindsey, to do retractions. She  
19 said she was involved in credits back to Medicaid, and she said  
20 she never directed staffing coordinators to falsify anything.  
21 That was Dee Lindsey.

22 And then Artincy Hobbs. What did Artincy Hobbs say  
23 about her actual job beyond saying "We bill by the plan of  
24 care," whatever that exactly means? She said if the patient was  
25 in the hospital she would subtract the time. She said she went

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1 back and made changes based on in-house communications and the  
2 Generations report. She said she would bill by the plan of care  
3 unless there were in-house communications. She said she did not  
4 believe the staffing coordinators were intentionally withholding  
5 in-house communications. She didn't believe that the Perrys  
6 were telling the staffing coordinators to withhold any in-house  
7 information. She maintained that pink notebook, Exhibit 14.

8 Now, it's true that Artincy Hobbs said, well, she got  
9 behind and she didn't always have time to accurately process the  
10 information she received about actual hours. But Artincy Hobbs'  
11 shortcomings and failures, and at time perhaps inability to do  
12 her job completely, they don't make Wayne Perry a criminal.

13 And wasn't this, after all, a matter of priorities for  
14 Artincy Hobbs? She apparently had time to bill thousands of  
15 dollars of fake respite care time sheets that no one even signed  
16 for Vernice Spain and Sarina Freeman and Tamika Nichols and  
17 others, and hide them from Mr. Perry and the nurses. When  
18 you're running respite fraud, maybe you don't get to all of the  
19 adjustments you should. But again, that doesn't make Wayne  
20 Perry a criminal.

21 But what else about billing by the plan of care? If  
22 Wayne Perry was dead-set on billing by the plan of care, why did  
23 he invest in all this billing technology that never got off the  
24 ground, but was at least an attempt? Community Personal Care  
25 used Home Trak for six months. It couldn't get the software to

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2515

1 handle two aides for the same patient in the same week and they  
2 stopped using it.

3 Mr. Sears told you the goal was to automate the entire  
4 system. Wayne Perry had a goal with Generations to automate the  
5 billing process, to submit the hours through Generations and to  
6 integrate it with the Paychex system. Community Personal Care  
7 was actually working on that process, and Mr. Sears said was  
8 three to six months away. What's going on there if Mr. Perry's  
9 criminal scheme is exactly what he wants here? We just push a  
10 button and bill by the plan of care.

11 One other thing -- and maybe the last thing about the  
12 plan of care, but the most important -- there was no evidence at  
13 all in this case from Deborah Scoggins. Deborah Scoggins was  
14 the payroll clerk. Deborah Scoggins worked every single week,  
15 every single Tuesday afternoon and evening with Artincy Hobbs.  
16 They went through the time sheets together. They went every  
17 Tuesday night. Now if Wayne Perry really did execute a  
18 deliberate billing scheme, he would have to direct his two  
19 employees who handled payroll and billing to essentially create  
20 a double set of books. Because otherwise this doesn't make any  
21 sense. He'd have to make very clear to his billing clerk that  
22 he wanted her to bill only by plan of care, and to his payroll  
23 clerk that he wanted to compile a different set of numbers, and  
24 that all the way forward, because of that little delta between  
25 actual and plan of care, we're going to keep going and that's

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1 worth committing. And that's what they were deliberately doing,  
2 so that even though they're both dealing with the time sheets  
3 every Tuesday, one comes away with one set of numbers, and the  
4 other comes away with another set of numbers. But there's no  
5 evidence in this case that payroll was systemically different  
6 from billing. There's no evidence of a double set of books.

7           This is an insulting case, Your Honor, and it shows  
8 how superficial the government thinks you are. They're going to  
9 say we're going to show you a couple of examples of charts that  
10 show there's a plan of care and there's an amount out and  
11 there's a differential, and we're going to add up those  
12 differentials and say this is billing by the plan of care fraud.  
13 That's what they did here.

14           Look at what they did. Now, these Counts 2 through --  
15 this is the indictment. What they did here was they said, well,  
16 for Joseph Dickerson, Elsie Johnson, we've got a personal care  
17 overpayment. And they're blowing right past this and they want  
18 it to blow right past you. They want you to say, oh, yeah,  
19 there's \$7,000, \$13,000, that's all from plan of care billing,  
20 the plan of care billing fraud.

21           Well, look at Elizabeth Mullen, for instance. There's  
22 whole months of time sheets that are not in the file now, but  
23 that Elizabeth Mullen surely got care for this those months,  
24 this woman, that they have added up here and said oh, yeah,  
25 there's \$13,000 of fraud. But what they're not telling you --



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2517

1 because they don't even think you're going to look -- what  
2 they're not telling you is for month after month after month we  
3 just racked all of that up as plan-of-care billing and they  
4 don't do anything more systemic than that.

5           They do, really, the same thing with respite care.  
6 They just say every single penny in this chart about respite  
7 care, every single penny -- because we've decided that Michael  
8 Mullen had to have made the request for the respite care  
9 hours -- because we've decided that, every penny that Elizabeth,  
10 Mullen ever received in respite care hours is fraud. That is  
11 where these numbers come from. They don't want you to look at  
12 this stuff. They just want you, oh, yeah, this is fraud.

13           But getting back to billing by the plan of care, if  
14 there is a plan of care fraud here, the government has to show  
15 you systemically, with a real audit, with a real comparison of  
16 the databases in payroll and in billing. And they need to show  
17 you, yeah, Wayne Perry, he had a double set of books going on.  
18 That's exactly what he was doing. He must have intended that.

19           They didn't do that. They didn't even bother.  
20 There's no evidence of that. You didn't even hear from Deborah  
21 Scoggins, who worked every Tuesday of her life with Artincy  
22 Hobbs.

23           Ladies and gentlemen, there's a lot of mess in these  
24 billings, but they have to show that Mr. Perry specifically  
25 intended this fraud. And there's all kinds of reasonable doubts

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2518

1 about that.

2 Now let's go on to the altering records and the  
3 Clifton Gunderson plan audit. The second major prong of the  
4 government's case is that Wayne Perry knowingly impeded and  
5 obstructed Clifton Gunderson by altering and forging patient  
6 records. The government would have you decide -- I'm sorry  
7 about this, I can't see you all -- Mr. Wayne Perry, fresh off  
8 his shoulder surgery and physical therapy sessions and with a  
9 belief his office and his procedures were running on all  
10 cylinders without him, and after coming in and getting pizza for  
11 everyone that Friday night, right then he left the office with a  
12 dastardly plan in mind that a very large group of his staff,  
13 basically everyone working together all weekend and without any  
14 specific direction and in the constant presence of a full-time  
15 employee of the Commonwealth of Virginia, and without tipping  
16 off any of the registered nurses who were also present and who  
17 never would have forged anything, without tipping them off about  
18 what they were doing, they were going to write comments and  
19 forge signatures and sign as RNs and make up hours and otherwise  
20 trash his company's patient charts on the weekend before the  
21 Clifton Gunderson audit? That was Wayne Perry's deliberate,  
22 intentional scheme.

23 Now, Mr. Perry doesn't dispute that several of his  
24 employees altered patient files on the weekend *en masse*. And no  
25 one denies that the forgeries and alterations are obvious

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2519

1 crimes. What Mr. Perry does contest, though, is that he had any  
2 involvement in his employees' conduct that weekend; that he had  
3 any knowledge of what they did, or that he intended that their  
4 crimes be committed. There's no evidence to show any of those  
5 things, and there are lots of reasonable doubts.

6 Let's look at the evidence. There's nothing wrong  
7 with conducting internal audits. Every responsible healthcare  
8 in America does it all the time. CPC did internal chart audits  
9 every 90 days. They were constantly reviewing the records.  
10 Nurse's notes had to be complete and accurate. Why do you  
11 conduct an internal audit? Find the time sheets, make sure  
12 they're there. They're not always there. They weren't in this  
13 case. Put them in the proper order. Make sure they're  
14 complete. Fill in obvious omissions. Correct stupid mistakes  
15 like, well, you put 4/1, but you didn't put 4/1/09, and if you  
16 don't have that '09, they're going to retract that amount. Know  
17 what's coming. Troubleshoot and improve. This is what they did  
18 at Community Personal Care.

19 The government makes a lot about Jessica Smith, the  
20 intern and whatever was being done with that piece of paper, and  
21 the Everest interns who were there for a week, I think, who were  
22 billing people from some college who were working with Dee  
23 Lindsey. That's all they got. What they completely ignore and  
24 hope you'll ignore is say, Exhibit 40. Exhibit 40 is one year  
25 of chart audits in 2008. Take a look the this. It involves

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1 almost every employee in the company. And all these nurses and  
2 all these patients and all these questions and all of these  
3 checkmarks. And this is what is going on. There's nothing  
4 fraudulent about this. Take a look at that. This is a  
5 "criminal enterprise". Well, that's 2008 in the internal audit  
6 business. See if you can find some fraud there. So there's  
7 nothing wrong with audits.

8           There's also nothing wrong with correcting records if  
9 you do it properly. Correction is permitted -- it has to be,  
10 unless this whole thing is ridiculous -- but falsity and forgery  
11 isn't. Linda Hanson told you it would not be fraud if a nurse  
12 forgot to put something on a time sheet. Georgianna Wright said  
13 when she received Allison's notes in her patient charts, she  
14 went back to see the errors, and if they were hers, she would  
15 correct them.

16           Christine Elliott said there's nothing illegal about a  
17 pre-audit review for quality assurance. And even JoAnn Hicks  
18 from Clifton Gunderson said corrections are permitted.  
19 Corrections can be done. Let's not say there are no  
20 corrections. But they have to be done right.

21           Well the next thing is, there's nothing wrong  
22 employing Allison Hunter-Evans to conduct special audits. All  
23 the company knew she was there, and none of them thought there  
24 was anything wrong with it. They didn't feel that she was doing  
25 anything wrong. She always expected that Allison, being a

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2521

1 Medicaid auditor, knew what could be fixed, how it could be  
2 fixed, what could and could not be fixed, as Mr. Perry said it.  
3 He never thought that Allison would do something that wasn't  
4 Medicaid policy or procedure. Why would you be paying her if  
5 you can just make all this stuff up and blow it off?

6           Louis Wilson said Allison Hunter was looking for  
7 errors in the chart that we would look for in any audit. What  
8 was missing, where a date had been left out, where a particular  
9 item hadn't been filled in or a signature was missing. All  
10 those items. Look, Allison Hunter never asked Louis Wilson to  
11 falsify records or do anything anybody thought was illegal. No  
12 one ever suspected that Allison Hunter's role at the company was  
13 somehow illegal.

14           And then the company did an amazing thing. It had  
15 Allison Hunter-Evans month after month, get her notes typed up  
16 and circulated. They were left for Jean Watson, typed up by  
17 Deborah Scoggins. Deedra would use those notes to correct  
18 obvious errors properly. She saw nothing wrong with that. Jean  
19 Watson would write up these sticky notes on a ledger, would  
20 record who was responsible for the deficit, both nurses and  
21 aides. Jean Watson said the aide records are only to be  
22 corrected by the personal care who completed form, but she  
23 didn't think there was anything wrong with what Allison  
24 Hunter-Evans was doing. And Allison Hunter kept working for CPC  
25 for almost two years after this audit. She was still working

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2522

1 there at the end. Now, this is not an ongoing fraud. It's a  
2 basic, routine, lawful, expected endeavor of a healthcare  
3 business.

4           So what's the next point? If Mr. Perry intended a  
5 major forgery and alteration crime on that weekend, nothing  
6 about that weekend makes any sense. Why, if you're going to  
7 forge and defraud, why do you have all of your employees come?  
8 Why all hands on deck? Why invite the PCAs? It's only 10  
9 files. All you need is your few trusted, skilled artisans who  
10 can do the forgery and fabrication needed, have those  
11 specialists come in, get the job done. Let's keep it quiet,  
12 otherwise -- but Mr. Perry is wide open. He's transparent. Get  
13 them in here. All hands on deck. Let's get ready. Now, why do  
14 you do that if you think you're about to engage in massive fraud  
15 together? Why place so many of them -- or why place all of them  
16 under the supervision of someone who currently works for the  
17 Commonwealth and presumably might decide, boy, if I see a big  
18 fraud, I'm going to have to report you? Why bring in the  
19 nurses? Deedra was there, Jean Watson was there. If Wayne  
20 Perry intended to commit fraud, he wouldn't have those nurses  
21 involved at all. They would be as far from there as he could  
22 get. They wouldn't falsify records or condone it for anyone.

23           This is my favorite: Why would you have a sign-up  
24 sheet, Exhibit 79? Why would you document and record and make  
25 sure, and preserve forever, the record of your intended,

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2523

1 deliberate, fraud? Make a sign-up sheet that shows everyone who  
2 was there? And why, after years of well-documented and  
3 legitimate internal audits that you paid good money for, after  
4 employing Allison Hunter-Evans to give you that guidance, why  
5 would you change course so abruptly and so radically and go from  
6 Exhibit 40, that notebook of 2008, to this cheap fraud?

7 And why, too, are the alterations so clumsy  
8 and pointless?

9 MR. DAVIS: Agent Wright, could I ask you to call up  
10 Exhibit 80, please, just briefly? Just the first document?

11 Wayne Perry had a bunch of Community Personal Care  
12 records -- I'm sorry, I didn't give you notice.

13 These time sheets that are perfectly good time sheets  
14 except they don't say "family" -- Exhibit 80, please.

15 That's okay, Agent Wright. Thank you.

16 This is really stupid stuff. This is a time sheet,  
17 doesn't seem to have anything else wrong with it. This is  
18 Ethelene Williams. Long-time patient. This is her personal  
19 care. But someone wrote "family is supportive and patient  
20 responded well to care" in a totally different handwriting. And  
21 someone signed Sarina Freeman's name in the RN block. RN's  
22 signature is not mandatory. And maybe that was Vernice who  
23 forged it, I don't know. Somebody really got confused and  
24 really didn't know what they were doing that night. But the  
25 government's asking you to believe that Wayne Perry intended

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1 that these people trash his perfectly good documents -- or  
2 almost perfectly good, they didn't say family supported well to  
3 care or whatever that phrase is -- this is stupid stuff. And  
4 these altered documents, they scream "Alteration". "Forgery".  
5 And they're saying, well, this is what Wayne Perry wanted. This  
6 is what he meant to have happen. It's clear, ladies and  
7 gentlemen, Wayne Perry had nothing to do with this.

8 And then, and this is really important, the testimony  
9 of the forgers and alterers about critical facts was all over  
10 the map. Did you hear it? Allison Hunter-Evans told the FBI  
11 that Angela Perry was there all day Saturday. That's what she  
12 said. But then she got caught and it turned out that, in fact,  
13 Angela wasn't there all day Saturday because of the birthday  
14 party for her mother, she didn't come in until 7:00 or 7:30.  
15 Oh, but she was there... that's an amazing lie. That's an  
16 amazing effort to pin something on an innocent person. And oh,  
17 yeah, we'll just blow right past that. Maybe it wasn't all day.  
18 It sure wasn't all day, was it, ladies and gentlemen?

19 What about Vernice Spain? Vernice Spain said that in  
20 preparation for the audit, every chart was reviewed from A to Z  
21 from 2009 to 2011, even though the upcoming audit involved only  
22 10 charts. Well, how did Wayne Perry benefit? Why would he  
23 ever want people working on anything but the 10 charts that  
24 weekend? And if Vernice Spain is doing an A to Z audit and  
25 other people working with her and someone spent a whole lot of



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2525

1 time there that weekend, what are the reasons they might have to  
2 be doing that? Wayne Perry doesn't have any reason to do that.

3 And then best of all is Renee Neighbors. Renee  
4 Neighbors says all of my instructions came directly from Wayne  
5 Perry. Wayne Perry told her, he ordered her to sign the charts.  
6 In his office, Sunday at 8:00 p.m., there he was, Mr. Wayne  
7 Perry in the flesh, directing alteration of documents. Well, no  
8 one else said that. Do you think Renee Neighbors maybe got the  
9 signals crossed a little bit? Do you think she might have an  
10 axe to grind? Do you think her evidence is in the slightest bit  
11 reliable? But the government threw her up there with everyone  
12 else: We're just gonna blow right past it.

13 We don't know what other crimes were being perpetrated  
14 or covered up that weekend, because we don't know what happened.  
15 And the government, of course, doesn't investigate embezzlement.  
16 But we do know one of the most -- you learn things every day in  
17 this case. One of things that I learned was Dee Lindsey, who  
18 left in March of 2010 -- Dee Lindsey was out of there early,  
19 March of 2010 she's gone -- she testified that she had received  
20 respite hours on her time sheets and got paid for them. And Dee  
21 Lindsey received kickbacks from aides going way back. Ladies  
22 and gentlemen, this has been going on under Wayne Perry's nose  
23 for a while. Respite fraud, stuff just made up, more hours, and  
24 submit the check with the aide, we all pocket a little cash, and  
25 maybe a lot of cash.

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1           We also know that who is running this? Who is there?  
2 Vernice Spain, Sarina Freeman, Artincy Hobbs, all three of those  
3 people were heavily involved in billing fraud and kickbacks.  
4 What were they doing with Community Personal Care's records that  
5 weekend, and what crimes of their own -- because there surely  
6 were those crimes -- what crimes of their own were they trying  
7 to hide?

8           The last thing about the audit and then we'll go to  
9 respite.

10           MR. DAVIS: And Your Honor, I'm trying to meet my time  
11 deadline.

12           Allison Hunter-Evans claimed that she informed,  
13 specifically informed Wayne Perry afterwards that the staffing  
14 coordinators had signed and back-dated documents. But that's  
15 incredible on its face. It's really the only specific evidence  
16 from her that even implicates Wayne Perry. She said that she  
17 told Wayne about signing the actual documents and back-dating  
18 them and the staffing coordinators were not providing the  
19 service. She says that Wayne Perry assured her that staffing  
20 coordinators contacted the patients daily to check on their  
21 status and the individual and make documentation, and that was  
22 the reason the staffing coordinators could sign the documents.  
23 So she tells you about this, and ah, the government puts her up  
24 there, you have evidence that Wayne Perry, he knew about this,  
25 he directed it. That conversation's uncorroborated, there's no

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1 time or context, there's no witnesses, there's no details. But  
2 it also doesn't make any sense. Why? Because one thing we know  
3 about Wayne Perry, he really doesn't know when staffing  
4 coordinators can or can't sign documents, and he wouldn't ever  
5 tell Allison Hunter-Evans that he did know. That's why he hired  
6 her. He doesn't know this stuff. And she's saying, well, he  
7 told me that the staffing coordinators could do that if they did  
8 Roll Call. That doesn't make any sense, and you know that's not  
9 true.

10 But the other thing, why would Angela -- think what  
11 she's saying. She pled guilty to altering records. She said in  
12 her plea agreement "I saw them forging. I saw them making up  
13 hours." She saw the big stuff, not just the cheap comments  
14 being added. Now, why would you decide, well, I really need to  
15 talk to Wayne Perry about a bad thing I saw this weekend, and so  
16 I'm going to pull him aside and have this specific conversation  
17 I'm going to tell you about, but not talk to him about the  
18 person who was forging signatures, about the people who were  
19 making up hours right under her nose, that she had seen, that  
20 she had admitted in her plea agreement she knew about? Why does  
21 that make any sense at all? If you really had this critical  
22 conversation with the CEO of the company, wouldn't you tell him  
23 about the really bad stuff that happened?

24 Ms. Allison Hunter-Evans is an opportunist from the  
25 word Go. When it's her time to be sentenced, she's counting on

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2528

1 the government to tell the judge what a good job she did and how  
2 she helped the government obtain convictions in the case. But  
3 how far would you trust her uncorroborated word about a  
4 conversation with Wayne Perry?

5 Let's go to respite fraud. That's the third prong.  
6 The third and final prong has kind of two parts. They say,  
7 well, Wayne Perry executed a scheme to defraud Medicaid by  
8 fraudulently billing for respite care. And the argument says,  
9 well, first, Wayne Perry deliberately committed respite fraud  
10 because his employees worked respite hours for particular  
11 patients who weren't eligible for respite hours or who didn't do  
12 it the right way. That's argument No. 1 from the government.

13 And argument No. 2 is, he separately knew about and  
14 participated in his employees' scheme to just make up respite  
15 hours that no one ever worked and put 100 hours or 80 hours in a  
16 week on a time sheet that no one signed and no one even pretends  
17 was real. And he was, he was doing that too. That's also his  
18 intentional, deliberate crime. Well, let's look at those.

19 The first argument is, well, it's all respite fraud.  
20 That's how they did their indictment. Remember how they did  
21 that indictment? All those hours, they're not saying, you know,  
22 the aide wasn't there actually working. What they're saying is,  
23 well, Michael Mullen lived in Maryland and he wasn't really the  
24 kind of personal -- primary caregiver -- you know I always get  
25 that wrong -- who actually could get respite hours, and he

1 didn't call to ask for the respite hours and therefore all  
2 \$35,000 is fraud. That's the government, that's what the  
3 government's saying: It doesn't matter if it was worked or not,  
4 and every penny for respite under this theory is a fraud scheme  
5 by Wayne Perry against the Medicaid.

6 But Wayne Perry had nothing to do with this process.  
7 Look at Elsie Johnson. The government says in Count 3, \$13,000,  
8 almost \$14,000 of respite care billed for Elsie Johnson was  
9 fraud. They don't even care about or look at the nurses' notes.  
10 They didn't even talk to the nurses about these patients. But  
11 what did Linda Hanson say? She says, well, respite was approved  
12 for Elsie Johnson in March 2010 when she visited her. Wayne  
13 Perry had nothing to do with that.

14 In April of 2010, Ms. Johnson was still in chronic  
15 pain, according to Linda Hanson's notes. Ms. Johnson was  
16 pleased with the aide and the services.

17 In May of 2010 the personal caregiver was -- the  
18 primary caregiver was Wanda McNair, and client reports being  
19 pleased with the services and the aide.

20 In June of 2010 the client was very pleased with the  
21 aide and service.

22 In July of 2010, patient continues to need personal  
23 care and respite care services.

24 In August of 2010, the client continues to need  
25 personal care and respite services. The aide is wonderful, and

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1 the client is pleased with the services.

2 That's what Linda Hanson, going out there dutifully  
3 every month, actually checking in with Elsie Johnson, that's  
4 what she's experiencing. That's the reality here. It's not the  
5 \$35,000 they have thrown on an indictment. And they're saying,  
6 well, that's all fraud.

7 And then look at Elizabeth Mullen. She's actually the  
8 \$35,000, that's the largest amount charged. That's over four  
9 years. Deedra Davis-Hussein actually lived that relationship.  
10 She identified a primary caregiver in every case, including this  
11 one. She encouraged the use of respite, especially to clients  
12 who were sick or very ill. She encouraged some clients to get  
13 service twice daily because they needed it. Deedra found  
14 nothing wrong with encouraging respite hours. For Elizabeth  
15 Mullen getting 41 personal care hours a week, she said Michael  
16 Mullen was very involved in Elizabeth Mullen's care. She would  
17 talk to him about the care, including the respite care. She  
18 said Elizabeth Mullen would call her and ask her how much time  
19 she had left, and Deedra even discussed respite care with  
20 Michael Mullen on visits. But the government's just going to  
21 tell you this whole thing was fraud, and rack it up.

22 What did the evidence show about respite? It's really  
23 pretty simple: Only an RN could decide to seek authorization to  
24 receive respite hours. Only Medicaid could authorize respite  
25 hours based on the information the nurse provided. No law says

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1 that only the primary caregiver can request respite. No law  
2 says that only a registered nurse can approve a particular  
3 respite request. Respite care can be episodic and it can be  
4 routine. The government's whole respite case rests on a premise  
5 they didn't really explain to you, but that is, if the patient  
6 and not the primary caregiver ask for the respite, that's fraud.  
7 They're going to put on a primary caregiver, "While I didn't ask  
8 for respite." Well, maybe your 97-year-old mother did. But  
9 that's fraud. Convict Wayne Perry. Take away his liberty.

10 The nurses and the staffing coordinators encouraged  
11 patients and families to use respite hours. Respite hours and  
12 the amount of respite hours remaining were continually inquired  
13 about by the patients and families. Louis Wilson would take  
14 reports with her. Linda Hanson said respite care was scheduled  
15 on a consistent basis where the patient didn't want to be left  
16 alone.

17 Now, there was a fair amount of confusion about how  
18 and when the regulations changed that allowed respite hours for  
19 primary caregivers who do not live in the house. Louis Wilson  
20 said Medicaid changed the respite requirements and opened the  
21 door wide. Linda Hanson recalled Medicaid meetings where they  
22 said the primary caregiver didn't have to live in the home  
23 anymore. She said she did not know when the provision changed  
24 and when the primary caregiver had to live in the home, she  
25 remembers being strict about it, and she wouldn't have violated

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2532

1 it if it was still a rule.

2           Respite was, as Linda Hanson testified, one of the  
3 looser Medicaid rules. None of the nurses believed that  
4 Community Personal Care's use of respite was fraudulent. Those  
5 are the facts. The nurses and the patients interpreted the  
6 respite benefit loosely. The government now applies the  
7 strictest possible construction in the rules as the basis for  
8 these fraud charges, which are really most of the money alleged  
9 in the indictment. But this is a regulatory argument about a  
10 loose, new government benefit that is not well-defined. That's  
11 all it is. It's not a fraud crime. And there's plenty of  
12 reasonable doubt about it whether Wayne Perry, for four years,  
13 executed a scheme to defraud Medicaid.

14           Well, that leaves the government's remarkable  
15 alternative claim that Mr. Perry was also in on his employee's  
16 scheme to manufacture and bill for respite hours that were never  
17 worked, often using time sheets that sometimes weren't even  
18 signed.

19           Well, the most important thing here is that the  
20 government's own witnesses, the perpetrators of the respite  
21 fraud scheme, said that Wayne Perry didn't know about and didn't  
22 direct their scheme. Tamika Nichols said she never heard Wayne  
23 Perry say make up hours. Dee Lindsey said Wayne Perry never  
24 said to bill respite hours not worked. Artincy Hobbs billed for  
25 fabricated respite time sheets, but she never made a claim that



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1 Wayne Perry ordered it. Sarina Freeman said she had about seven  
2 or eight personal care aides paying her kickbacks, she doesn't  
3 remember, but those were all secret and hidden.

4 And then there's the remarkable Vernice Spain, and she  
5 said we took it upon ourselves to create time sheets on our own.  
6 Sarina, Vernice, Tamika and Artincy came up with the idea of how  
7 to increase respite hours on their own. Wayne Perry said "run  
8 the respite", but he didn't say falsify aide records.

9 Vernice Spain said the Perrys were not aware of the  
10 money Vernice Spain received. She hid it from them. Vernice  
11 Spain said that Artincy took the time sheet and she placed it on  
12 the side in a folder, or told the staffing coordinators to hide  
13 them and take them later to get the patients to sign. No one  
14 ever did that. All those time sheets were just hidden.

15 Vernice Spain said that the nurses never saw those  
16 sheets, since they weren't in the charts. Vernice didn't want  
17 the nurse to see the records because they were altered.

18 There's no information on all the additional  
19 information from aides and kickback patients -- kickback  
20 payments. We don't know how much money was stolen from Medicaid  
21 because no one investigated it. We have no idea how many  
22 respite sheets weren't even in the patient files. No efforts  
23 was made to list a roster of aides who were falsifying time  
24 sheets and paying kickbacks.

25 Vernice Spain back-billed respite. Artincy Hobbs said

*Closing - Defendant W. Perry*

2534

1 that it was only so far they could go back, then she would let  
2 them know when they had to stop.

3 Vernice Spain was almost infinitely resourceful. She  
4 even forged checks the just pocketed. She wasn't even going to  
5 share with the aide the embezzled amount. She was infinitely  
6 resourceful, but she never said that Wayne Perry was in on this  
7 or ordered it.

8 The government's case can't rise above its own  
9 witness, its own chief accuser.

10 Well, the time sheets are critical.

11 MR. DAVIS: Your Honor, if I could have five more  
12 minutes?

13 THE COURT: Two.

14 MR. DAVIS: I'm going to try, Your Honor.

15 THE COURT: I'm confident you can do it, Mr. Davis.

16 MR. DAVIS: Ladies and gentlemen, the evidence of  
17 employee respite fraud and deceit and kickbacks destroys the  
18 government's claim of conspiracy. The government says that  
19 Wayne Perry conspired with his wife and others to defraud  
20 Medicaid; that they were all in league together. But think  
21 about it. This is the strangest conspiracy ever imagined.  
22 Because the other supposed conspirators were stealing money from  
23 Wayne Perry. Because the other supposed conspirators actively  
24 concealed their fraud from Mr. Perry. Because employees  
25 committing misconduct were regularly being fired.

*Closing - Defendant W. Perry*

2535

1 Ladies and gentlemen, this was a rush to judgment by  
2 the FBI. Look what they did. They interviewed four  
3 confidential sources, one of whom was Anthony White, who was  
4 fired as a forger and embezzler in 2010. They executed a search  
5 warrant, they didn't even interview the target. They didn't  
6 investigate embezzlement. They wouldn't be bothered to do  
7 surveillance on the Dana Welch deal. And to this day they have  
8 no idea how much money employees stole from Medicaid and from  
9 Wayne Perry.

10 Louis Wilson told you, on the day of the search  
11 warrant they were interested in Wayne Perry and no one else.

12 And so the government throws everything up. It talks  
13 about copays. It talks about a post-search warrant decline in  
14 revenue, even though after the search warrant there was an  
15 immediate decline. CPC had no paperwork to bill. They lost  
16 four to five patients a day. Vernice Spain and Sarina Freeman  
17 were immediately sabotaging the business. But we're going to  
18 show you a little chart, and without any other analysis, without  
19 anything else, oh, yes, you can see how this is billing by the  
20 plan of care fraud. That's what they did.

21 They never verified Sabrena Tabron's audit. Think how  
22 easy it would have been to find the audit that she talked about  
23 that supposedly occurred, and these respite sheets that she  
24 said -- it would have been easy to do that. But they didn't do  
25 that.

*Closing - Defendant W. Perry*

2536

1           The same is true with Dee Lindsey and the \$40,000 that  
2 Mr. Wayne Perry needed. Think how simple it would have been to  
3 find the one week in 2009 where \$40,000 in respite hours  
4 instantly and magically appeared? But they're not going to do  
5 that. They don't care about that. They just want Dee Lindsey  
6 to go up and to throw more mud at Wayne Perry, ah, oh, yeah, you  
7 guys will just -- oh, yeah, reasonable doubt.

8           MR. DAVIS: I'm wrapping up, Your Honor.

9           The last thing I'll say about the government's  
10 investigation is to remind you of what Mr. Broughton said at the  
11 start: The wrong people are on trial. By ignoring the  
12 embezzlement, by closing their eyes to a long-running kickback  
13 scheme between staffing coordinators and personal care aides,  
14 and by immunizing everyone in sight, the government allowed a  
15 very serious crime, much larger in scope than the charges  
16 against Wayne Perry, to go unexamined and unpunished. Even  
17 using these outlier files, the personal care overpayment charged  
18 in Count 5 against the Perrys is \$1,600. Meanwhile, in the  
19 summer of 2012 alone, the fake respite time sheets were flying  
20 into Artincy Hobbs's office with tens of thousands in obvious,  
21 provable fraud against Medicaid. And the cash kickbacks from  
22 the personal care aides were piling up in the pockets of Vernice  
23 Spain and her ilk. In this case, the real money, the real money  
24 was in those embezzlements. But the government only wanted the  
25 fat cat, and so they ignored all of that. They didn't

1 investigate that, because their sole target from the beginning,  
2 Wayne Perry, had nothing to do with them.

3 Wayne Perry --

4 MR. DAVIS: Last page, Your Honor.

5 -- Wayne Perry had a lucrative and Joint  
6 Commission-accredited business. He had a loving family and  
7 friends, he had vital positions in the community, and he had a  
8 half-century of life behind them in which he played by the  
9 rules. The government has now asked you to accept its theory  
10 that one day, for no good reason that anyone can think of, Wayne  
11 Perry deliberately threw it all away and committed this act of  
12 suicide by executing a scheme to defraud Medicaid through his  
13 employees that had no hope of escaping detection.

14 Wayne Perry is not the most effective CEO you've ever  
15 met. But he is a good and decent man and he acted in good  
16 faith. You heard from the people who know him. Michael  
17 Hargrave, Yvonne Allmond, his next-door neighbor, Felix Strater,  
18 Louis Wilson, who worked with him for eight and a half years,  
19 Mr. James Sears. All the employees who have known Mr. Wayne  
20 Perry forever, they know that man, and even long after he was  
21 disgraced and crushed by this federal indictment, they came  
22 before you to say about Wayne Perry what they know to be true.

23 Ladies and gentlemen, Wayne Perry is innocent of these  
24 crimes. The reasonable doubts are staring all of us in the  
25 face. Wayne Perry did not do these things and he did not intend

*Closing - Defendant A. Perry*

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1 these things. He didn't conspire with anyone, and he didn't  
2 execute a scheme to defraud.

3 On behalf of Mr. Wayne Perry, I ask you to look  
4 carefully at the evidence, to hold the government to its heavy  
5 burden of proof, and to end this long nightmare by returning the  
6 only verdict that the facts and the law permit: Not guilty on  
7 all counts.

8 Thank you.

9 THE COURT: Ladies and gentlemen of the jury, I think  
10 that we have to make another technical switch-out, so we're  
11 going to take a five-minute recess, and we'll be back at that  
12 point. Thank you.

13 (Jury left the courtroom.)

14 (Recess taken from 2:18 p.m. to 2:27 p.m.)

15 THE COURT: Bring the jury in.

16 (Jury entered the courtroom.)

17 THE COURT: Everyone can be seated.

18 Mr. Sacks, your argument, please?

19 MR. SACKS: May it please the court.

20 Good afternoon, ladies and gentlemen of the jury.

21 The prosecution told you in their opening and closing  
22 argument that this is a case about dishonesty, deception and  
23 fraud, and we don't disagree with that. The problem is, that  
24 the dishonesty, deception and fraud is on the part of the  
25 witnesses that have been brought here by the government to try

1 to put a case together against Angela Perry.

2 Now, the government also mentioned four witnesses when  
3 they were talking about the plan of care and relying upon  
4 certain witnesses to prove those particular matters: Linda  
5 Hanson, Christina Brown, Renee Everson, Renee Neighbors-Everson,  
6 and Sherrice Ford. According to my recollection and notes,  
7 Linda Hanson testified as to Angela Perry that she had no  
8 personal knowledge Angela Perry ever falsified, forged or  
9 fraudulently treated any documents or instructed anybody to do  
10 that.

11 Christina Brown testified that Angela Perry never  
12 instructed anyone to her knowledge to add, correct or falsify  
13 any documents.

14 Renee Neighbors-Everson testified about the audit and  
15 merely mentioned Angela Perry in passing. She didn't say  
16 anything about any instructions that Angela Perry supposedly  
17 gave to persons to falsify records.

18 Sherrice Ford testified Angela Perry never asked her  
19 directly to fix charts herself.

20 So if the government to going to rely on those  
21 witnesses for certain propositions, then we have to take the  
22 rest of their testimony too. And the very witnesses I've  
23 mentioned all create reasonable doubt about Angela Perry's  
24 involvement at all.

25 Now, let me thank all of you for your patience, for

*Closing - Defendant A. Perry*

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1 your attention. It's been a long -- I guess we're going on  
2 three weeks. I know you all have been concentrating, it's been  
3 an imposition on your lives, and we sincerely appreciate that.

4 Your work is not over yet. The most important part is  
5 yet to come, and I ask you to be patient with me, as I'm the  
6 last one up before Mr. Salsbury will give a rebuttal argument.  
7 I know it's getting late in the day, but if you'll bear with me  
8 and keep your minds open and keep the attention that you've had,  
9 we thank you again and we would appreciate it.

10 Now, I remind you it's never a question of the  
11 government winning or losing a case, because we always win --  
12 the community, the jury, the court, all of us -- when justice is  
13 done. And there is no greater justice, ladies and gentlemen,  
14 than finding not guilty a fellow citizen like Angela Perry,  
15 whose guilt has not been proven to you beyond a reasonable  
16 doubt.

17 I also remind you that the numbers of counts, the  
18 number of charges -- there are 18 against Angela -- is not  
19 controlling. It's just as easy for your foreperson, whoever  
20 that is, to check not guilty on each box 18 times as it is one  
21 time. So don't be stampeded or rushed or pressured by the  
22 number of counts, because if she's not guilty of one, she's not  
23 guilty of all. And I submit to you she's not guilty, and that's  
24 what you need to check on that form.

25 Now, when we started this case together about three



*Closing - Defendant A. Perry*

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1 weeks ago, I made certain promises to you in the opening  
2 statement. I told you that the evidence would be that the  
3 government will not prove beyond a reasonable doubt that Angela  
4 Perry has done what she is accused of doing.

5 I told you that the evidence would show that certain  
6 employees of Community Personal Care did commit dishonest acts,  
7 and that certain employees at Community Personal Care did  
8 violate certain rules and regulations.

9 I also told you that I expected the evidence to show  
10 that none of that was done at the direction of or at the  
11 specific instruction of Angela Perry. Rather, I told you that  
12 the evidence would be that these employees acted on their own,  
13 for their own financial benefit, in a scheme to enrich  
14 themselves deceitfully under the nose of persons like Angela  
15 Perry.

16 And I told you that I expected that, to further prove  
17 these employees -- or to further show that these employees were  
18 guilty of these matters, the evidence would be that the  
19 government had to give some of them immunity from prosecution in  
20 exchange for their ability to testify without incriminating  
21 themselves criminally.

22 I told you, in other words, the evidence would show  
23 that these employees were so guilty of fraud themselves that  
24 they had to be given special treatment so they could testify  
25 without causing themselves to be charged.

*Closing - Defendant A. Perry*

2542

1 And I told you that we expected the government's case  
2 against Angela Perry, essentially, to be based almost  
3 exclusively upon the testimony of self-admitted liars, cheaters  
4 and thieves, and that they have their own agenda for advancing  
5 their own interests to avoid prosecution.

6 I told you that the evidence would be that they would  
7 have their own agenda to curry favor for themselves with the  
8 prosecution by offering this testimony against Angela Perry.

9 I told you that the evidence would reveal that their  
10 testimony, upon which the case against Angela is built, would  
11 not be worthy of belief beyond a reasonable doubt and is hardly  
12 sufficient upon which to base a verdict of guilty.

13 I submit to you with all, with the greatest respect,  
14 that I have made good on those promises; that what I predicted  
15 to you in the opening statement would be the evidence in this  
16 case is exactly what you have seen and heard.

17 Now, I would remind you that you all made promises  
18 too, as you were selected as jurors. You promised to base your  
19 verdict solely on the law and the evidence. Instruction No. 1  
20 tells you that it is your duty as jurors to follow the law as  
21 stated in all of the instructions of the court, and to apply  
22 these rules of law to the facts as you find them from the  
23 evidence received during the trial. It would a violation of  
24 your sworn duty to base any part of your verdict upon any other  
25 view or opinion of the law than that given in these

*Closing - Defendant A. Perry*

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1 instructions, and the court -- of the court, as it would be a  
2 violation of your sworn duty as the judges of facts to base your  
3 verdict upon anything but the evidence received in this case.  
4 And if you stick to that, you stick to the law that His Honor  
5 has given you, and you'll have that back in the jury room, and  
6 you apply it to the evidence in this case, then I am confident  
7 you will agree, just as I predicted, that there is not a case  
8 beyond a reasonable doubt against Angela Perry on these  
9 witnesses on this evidence.

10 Now, I briefly want to address a couple of legal  
11 principles. You've heard about presumption of innocence and  
12 reasonable doubt. Let me just briefly address those again.

13 Instruction No. 11, you'll get that again, in the  
14 first paragraph, reads as follows. And this is from the court.  
15 "I instruct you that the law presumes a defendant to be innocent  
16 of the crimes charged; thus a defendant, although accused of  
17 crimes in the superseding indictment, begins the trial with a  
18 clean slate, with no evidence against him or her." And what I  
19 submit to you that means, in effect, is that we are told that we  
20 start out the case with Angela Perry as being innocent. We are  
21 told to start the case with the assumption that she did not  
22 commit the crimes that she is charged with. We are told to find  
23 her not guilty unless and until the evidence proves beyond a  
24 reasonable doubt that she is guilty. If there's any reasonable  
25 doubt, the presumption of innocence has not been overcome, and

1 that is, alone, enough to require an acquittal. A not-guilty  
2 verdict.

3 Now, reasonable doubt. What is that? The instruction  
4 reads "The presumption of innocence alone, therefore, is  
5 sufficient to acquit a defendant unless the jurors are satisfied  
6 beyond a reasonable doubt of a defendant's guilt after careful  
7 and impartial consideration of all the evidence in the case.  
8 The burden of proof is upon the prosecution to prove guilt  
9 beyond a reasonable doubt."

10 And then reading down, "Unless the government proves  
11 beyond a reasonable doubt that a defendant has committed each  
12 and every element of the offense charged in the superseding  
13 indictment, you must find that defendant not guilty of the  
14 offense."

15 Now, what I submit to you that means is that, in this  
16 case, if you have a doubt about the individual witnesses whose  
17 testimony you heard that is reasonable; that is, is it  
18 reasonable to doubt witnesses who testify under a grant of  
19 immunity excusing all of their crimes, so long as they testify  
20 against the defendant, does that person come with baggage about  
21 their believability? Is it reasonable to doubt them? It  
22 certainly is.

23 Is it reasonable to doubt that a witness who has  
24 admitted to lying in documents, falsifying information, cheating  
25 Medicaid for their own personal financial gain, is it reasonable

*Closing - Defendant A. Perry*

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1 to suspect that testimony as not being the kind that you would  
2 receive beyond a reasonable doubt? It certainly is.

3 Is it reasonable to doubt a witness who has admitted  
4 to stealing from their employer and from Medicaid to line their  
5 own pockets? It's certainly reasonable to question those  
6 witnesses believability, their credibility.

7 And so I submit to you that a reasonable doubt exists  
8 in this case about all of these witnesses who have motives to  
9 fabricate; who have admitted to their own wrongdoing; who are  
10 proven liars and cheaters. We cannot base verdicts upon that  
11 kind of testimony, or we would cheapen the standard and burden  
12 of proof to where it wouldn't protect anybody.

13 Now, the instruction about reasonable doubt also says,  
14 "If the jury views the evidence in the case as reasonably  
15 permitting either of two conclusions, one of innocence, the  
16 other of guilt, the jury must, of course, adopt the conclusion  
17 of innocence." And I submit to you what that is telling us is  
18 that if you say to yourselves or in the jury room, well, you  
19 know, these people, maybe they are telling the truth about some  
20 things, but you know, they've got some serious, serious  
21 questions, maybe they're not. If you have that kind of  
22 dichotomy in your discussions, then you always give the  
23 defendant the benefit of the doubt. We err on the side of  
24 innocence. We adopt the views consistent with innocence. Only  
25 if the evidence is so overwhelming that you have no such split

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1 that it is beyond a reasonable doubt, can you convict someone.

2 Now let's talk about the evidence in this case.

3 Instruction No. 10 tells you -- and again, these numbers are not  
4 necessarily important, you'll see them when you get the  
5 instructions, but listen to what it says. "A separate crime is  
6 alleged against each defendant in each count of the superseding  
7 indictment. Each alleged offense and any evidence pertaining to  
8 it should be considered separately by the jury. You must give  
9 separate and individual consideration to each charge against  
10 each defendant." That is important because we have two  
11 defendants and we have two different people, and you have to  
12 evaluate the evidence on each count against each one separately  
13 and independently. And that is even though there's a joint  
14 trial. That is your duty under this instruction.

15 Now, the government makes a lot about they, as they  
16 argued the case, they keep say Wayne and Angela Perry this,  
17 Wayne and Angela Perry that. Well, the evidence shows a  
18 complete imbalance between Wayne Perry and his role in the  
19 company and Angela Perry and her role in the company. And to  
20 lump them together like that and to say, well, they were  
21 married, so she had this motive to enrich herself, that's guilt  
22 by association, ladies and gentlemen, and that's not permitted  
23 in these courtrooms. And the instructions tell you that.  
24 Instruction No. 47. "Merely associating with others and  
25 discussing common goals is not a criminal offense."

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2547

1           Therefore, just because they are married doesn't mean  
2 they engaged in a conspiracy. Or that Angela Perry had the  
3 authority or the power or the capacity in the company that her  
4 husband did. You have to give each separate consideration.

5           Instruction No. 51. "You may not infer that the  
6 defendant was guilty of participating in criminal conduct merely  
7 from the fact that he or she associated with other people who  
8 were guilty of wrongdoing." So just being in the company, being  
9 around these thieves and liars who did commit crimes, doesn't  
10 make her guilty of an offense.

11           Now, I submit to you that the evidence in this case  
12 shows that Angela Perry lacked the capacity, lacked the ability,  
13 the position, the authority and the responsibility either to  
14 conspire with Wayne Perry or to commit the substantive offenses  
15 that have been charged against her. Wayne Perry and Angela  
16 Perry, on this evidence, were in such different positions of  
17 authority and in their relationship to the company that I submit  
18 to you on the government's theory of this case, they couldn't  
19 conspire. And at least there is a substantial reasonable doubt  
20 about whether she could come together with him or anybody else  
21 the way it has been alleged in a conspiracy.

22           Even the government's immunized witnesses, those who  
23 had to be given that immunity so they could testify without  
24 going to jail themselves and whose credibility falls far short  
25 of beyond a reasonable doubt, even they acknowledge in their own

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2548

1 testimony that Angela was in a vastly different position than  
2 Wayne.

3 First of all, Christina Elliott, who was in DMAS, a  
4 DMAS registered nurse, administers the Virginia Medicaid  
5 Program, she testified -- and we know this -- that Mr. Perry was  
6 the owner and operator of the company, not Angela Perry; that  
7 the participation agreement with Community Personal Care and  
8 Medicaid was signed not by Angela Perry, but by Mr. Perry or by  
9 Mr. Sears, the chief financial officer.

10 Ms. Lindsey, who was a staffing coordinator and an  
11 employee, as a billing clerk, she reported to Mr. Perry, not  
12 Angela Perry. She reported every week to Mr. Perry about the  
13 billing numbers, not to Angela Perry. It was Mr. Perry's idea  
14 to send her, Ms. Lindsey, to a billing course, not Angela Perry.  
15 She informed Mr. Perry of the weekly respite care totals, not  
16 Angela Perry. And she said that Mr. Perry, like so many others,  
17 made the decisions in the company, not Angela Perry.

18 Ms. Hobbs said in regard to the audit weekend  
19 preparation that it was Mr. Perry who instructed the staff  
20 initially to pull certain charts and audit them for review. It  
21 was Mr. Perry who authorized overtime, not Angela Perry.

22 Ms. Hanson, acting director of nursing, Mr. Perry was her  
23 supervisor, not Angela Perry. The nurses worked for Mr. Perry,  
24 not for Angela Perry. The provider aide record, that's what  
25 you'll see on all these DMAS-90s, or many of them, the title



*Closing - Defendant A. Perry*

2549

1 Provider Aide Record, the provider is Mr. Perry, not Angela  
2 Perry. Wayne Perry hired and fired the employees. Not Angela  
3 Perry.

4 Vernice Spain said that it was Mr. Perry who told her  
5 initially of the staff meeting regarding the Clifton Gunderson  
6 audit that was coming up. Ms. Spain said that it was Mr. Perry  
7 who said go through charts and make corrections in accordance  
8 with the stickies from Allison Hunter-Evans. It was Mr. Perry  
9 who gave the termination letters to employees when they were  
10 caught stealing, not Angela Perry.

11 The Roll Call was put into place by Mr. Perry, not  
12 Angela Perry.

13 Ms. Freeman, the staffing coordinator, testified that  
14 when the nursing staff complained about Sarina Freeman and  
15 wanted her terminated, they went to Mr. Perry, not Angela Perry.  
16 When Sarina Freeman did -- when she testified that she didn't  
17 consider stealing money when she had inflated her respite care  
18 hours, she said I was not stealing from Mr. Perry. She didn't  
19 say I wasn't stealing from Angela Perry, because that's not who  
20 they looked at as the company.

21 And Detective Flengas from the Norfolk Police  
22 Department, when the embezzlement of funds was discovered by the  
23 company which was being perpetrated by Vernice Spain and Sarina  
24 Freeman, it was Mr. Perry along with Mr. Sears who went to the  
25 police to make the complaint, not Angela Perry. When a status

*Closing - Defendant A. Perry*

2550

1 report was sought from the Norfolk Police Department about that  
2 investigation, it was requested by Mr. Perry, not Angela Perry.

3 Christina Brown, a nursing supervisor, in opening  
4 cases, she said Mr. Perry was the one who wanted her to do the  
5 chart audits, it wasn't Angela Perry. She said Mr. Perry  
6 instructed her to update the plans of care and make sure the  
7 nurses were visiting patients in a timely fashion. It was not  
8 from Angela Perry. If an aide did not mark something that  
9 should have been marked, Mr. Perry directed that the aide be  
10 brought in for counseling, not Angela Perry directing that.

11 Ms. Neighbors-Everson, she said that the instruction  
12 to tell aides that they need to do respite hours because -- she  
13 said that the need to do respite hours is because what they were  
14 told by Mr. Perry, not by Angela Perry. Mr. Perry would have  
15 mandatory meetings, not Angela Perry. Mr. Perry -- she said you  
16 did what Mr. Perry told you to do. She didn't specify Angela  
17 Perry.

18 And I could go on, ladies and gentlemen, example by  
19 example.

20 Allison Hunter-Evans, she was paid in cash by Mr.  
21 Perry, not by Angela Perry. When Angela -- excuse me, Allison  
22 Hunter-Evans was hired, she met with Mr. Perry to see what  
23 needed to be done, not Angela Perry. This is the evidence in  
24 the case. We're not making this up. This is what you heard.  
25 You're not in the company, you weren't there, but you're

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1 eyewitness to what happened in this courtroom, and what I'm  
2 telling you is just repeating what you've heard already and  
3 summarizing it for you.

4 Mr. Perry, according to Allison Hunter-Evans, had  
5 records pulled by the staff and asked her what needed to be done  
6 for Medicaid billing, it wasn't Angela Perry.

7 Ms. Hunter-Evans provided the initial technical  
8 assistance plan to Wayne Perry, not to Angela Perry.

9 She then asked -- it was then Mr. Perry who asked for  
10 more specificity, not Angela Perry.

11 It was Mr. Perry who spoke with her about the upcoming  
12 Clifton Gunderson audit, not Angela Perry.

13 It was Mr. Perry who made hotel accommodations for  
14 her, not Angela Perry.

15 It was Mr. Perry who wanted to know the bottom line  
16 about how much money was owed to Medicaid, not Angela Perry.

17 So again, I could keep repeating. You get the point.  
18 The point is, that Angela Perry was in a totally different  
19 position in this company, and the fact that she was married to  
20 Wayne Perry does not make her guilty of anything. Anything.  
21 And to associate the two in a conspiracy because they were  
22 married is impermissible guilt by association that is not  
23 supported by the evidence in this case.

24 Now let me talk about the credibility of the  
25 government's case, because that's so important in this, in what

1 you're doing.

2           Instruction No. 12 says "You as jurors are the sole  
3 and exclusive judges of the credibility of each of the witnesses  
4 called to testify in this case. After making your assessment  
5 concerning the credibility of a witness, you may decide to  
6 believe all of that witness's testimony, only a portion of it,  
7 or none of it. After making your own judgment on assessment --  
8 or assessment concerning the believability of a witness, you can  
9 then attach such important weight to that testimony, if any,  
10 that you feel it deserves. You will then be in a position to  
11 decide whether the government has proven the charges beyond a  
12 reasonable doubt."

13           In other words, evaluating the witness's credibility  
14 will guide you in determining whether you can believe them  
15 beyond a reasonable doubt; whether their testimony, their  
16 circumstances, their situation, leaves you with a reasonable  
17 doubt about whether you can trust that evidence to take away the  
18 liberty of Angela Perry.

19           And the instruction also tells you, "You can consider  
20 all of the other evidence which tends to show whether a witness,  
21 in your opinion, is worthy of belief."

22           Now, one of the most important facets of a number of  
23 these key witnesses for the government against Angela is, as I  
24 have alluded to earlier, these immunity agreements. You're  
25 given an Instruction No. 17. You'll see it. It tells you this,

*Closing - Defendant A. Perry*

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1 from the court: "The testimony of an immunized witness, someone  
2 who has been told either that his or her crimes will go  
3 unpunished or that his or her testimony will not be used against  
4 him or her in return for that cooperation with the government,  
5 must be examined by the jury," that is you, "with greater care  
6 than the testimony of someone who is appearing in court without  
7 the need for such an agreement with the government. The jury  
8 must determine" -- now listen to this. This is the law from the  
9 ages, the experience that we as humans have had that we have put  
10 into our laws, what we have learned about these kinds of  
11 witnesses -- "The jury must determine whether the testimony of  
12 an immunized witness has been affected by self-interest or by  
13 the agreement he or she has with the government, or his or her  
14 own interest in the outcome of the case, or by prejudice against  
15 a defendant."

16           So we know from life's experience that people like  
17 that, who get a pass for crimes they committed in order to get  
18 them to testify, have reasons to lie, have reasons to fabricate,  
19 to protect themselves.

20           You have an instruction that talk about the testimony  
21 of an accomplice. These people claim to be accomplices in  
22 crimes. "Such testimony is always to be received with caution  
23 and considered with great care." You have to look at those  
24 witnesses with a very critical eye. And I submit to you that  
25 their testimony, which I'm going to review briefly, clearly

*Closing - Defendant A. Perry*

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1 creates a reasonable doubt about whether you can rely on them to  
2 convict Angela Perry.

3 Azuradee Lindsey, immunized witness. She admitted she  
4 falsified respite care time sheets, she got money kicked back  
5 from personal care aides whose respite sheets were inflated.  
6 She profited from the overbilling for herself, putting in hours  
7 that she didn't work. She committed crimes because she said she  
8 didn't want to lose her job. She would falsify information to  
9 help herself. And I would submit to you, if she would falsify  
10 information to help herself in that respect financially, what  
11 would she do to stay out of jail? If it's mere money that she's  
12 lying to get, what would she say on the witness stand to protect  
13 herself from going to prison? Being charged. She would say, I  
14 submit to you, anything. And that's why there's a reasonable  
15 doubt about these kinds of witness's testimony.

16 And listen to what she said. The question was "And  
17 this agreement is signed by you, is it not?" The immunity  
18 agreement with the prosecution. She said "Yes."

19 "And it's also signed by Ms. O'Boyle, the prosecutor  
20 who asked you questions?

21 "Yes.

22 "And it was witnessed by Special Agent Wright, who is  
23 sitting at this table?

24 "Yes.

25 "You know that, in order for you to avoid prosecution,

*Closing - Defendant A. Perry*

2555

1 you have to cooperate with them?

2 "Yes.

3 "And 'cooperate' means tell the truth according to  
4 this letter, correct?

5 "Yes.

6 "But the truth is what they say you have told them,  
7 correct?

8 "Answer: I would guess, yes. It has to be according  
9 to what I've told them up until this point.

10 "And it says should you -- should it be judged that  
11 you have given false, incomplete or misleading testimony or  
12 information, you shall thereafter be subject to prosecution?

13 "Yes.

14 "And when it says 'should it be judged,' the letter,  
15 as you said, is signed by the prosecutor and the agent?

16 "Yes.

17 "So they are the ones to judge whether it's truthful  
18 or not, correct?

19 "I guess so.

20 "So you have to please them?

21 "Yes."

22 Now, I'm not suggesting the prosecutors are doing  
23 anything untoward. What I'm suggesting is that the witnesses  
24 have an absolute motive to say what they think they need to say  
25 to please that table, because that table is the one that gave

1   them the pass in exchange for their testimony, in exchange for  
2   what I submit to you is testimony rife with reasonable doubt.  
3   How can we trust people like that who come in with that kind of  
4   condition before they can testify?

5               Now, the Credibility of Witnesses Generally  
6   instruction, Instruction No. 12, also tells you, "You should  
7   consider each witness's motive to falsify; consider any relation  
8   a witness may bear to either side of the case; the manner in  
9   which each witness might be affected by your verdict." In other  
10   words, do these witnesses have an incentive to have Angela Perry  
11   convicted? Of course they do. They want to uphold what they're  
12   supposed to say and do; to say what they think this table wants  
13   to hear. That's a motive to falsify and a motive to want to  
14   convict an individual. The better -- the more conviction there  
15   is, the better these people shine. That is the kind of  
16   witnesses that came in here against Angela Perry. There is no  
17   way that a citizen should be found guilty on that kind of  
18   testimony.

19              Artincy Hobbs. Immunized witness. She testified she  
20   fabricated information. She billed for hours that were not  
21   worked. She said she would falsely -- falsely -- give false  
22   information, excuse me, to advance her own interests in keeping  
23   a job. Now, I would submit to you, if she would falsify  
24   information to advance her own interests to keep a job, she  
25   would falsify information to advance her other interests.



*Closing - Defendant A. Perry*

2557

1 Imagine what she would do to stay out of jail. If she would  
2 simply commit crimes to keep a job, what would she do to keep  
3 herself out of prison? And here's what she said -- excuse me.

4 Vernice Spain, another immunized witness. She  
5 falsified respite hours for her own financial gain and created  
6 respite time sheets for her own financial gain. Here's what she  
7 said. The question was: "They are the ones who have the  
8 control over this letter, aren't they?"

9 "Answer: I guess so. I do believe.

10 "You know that, don't you?

11 "I think so.

12 "And you don't want to displease the government, do  
13 you?

14 "I don't want to displease anybody.

15 "But you certainly don't want to displease the  
16 prosecution, do you?

17 "No.

18 "Was that a 'no' that you just said? You don't want  
19 to displease them, do you?

20 "No one.

21 "But them especially, right?

22 "I don't think so.

23 "They're the ones who say that if you testify and  
24 cooperate, you won't be prosecuted, right?

25 "Yes.

*Closing - Defendant A. Perry*

2558

1 "And if they say that you should be prosecuted because  
2 you haven't said what is the truth, then you get prosecuted,  
3 right?

4 "Yes.

5 "So you do have to please them, don't you?

6 "I guess so."

7 That's the same kind of distrustful evidence that you  
8 heard from the previous witness, Ms. Lindsey. These are people  
9 who are testifying in a way they think they have to say. How  
10 could you trust that with a citizen's liberty, how could you  
11 trust that in a matter this grave, this serious, this important,  
12 when people are admitting "I'm testifying in a way that I think  
13 I have to say to please somebody else"? That's not beyond a  
14 reasonable doubt, that creates tremendous doubt about whether  
15 you can accept that or not and ground a verdict of guilty on.

16 Now, she said she committed a variety of dishonest  
17 acts with respite care time sheets because she wanted to keep  
18 her job. She admitted she would lie to keep her job. She  
19 admitted she would fabricate information to keep her job. And  
20 here's what she had to say about that. The question was: "You  
21 told us that we took it -- you told us that we" -- meaning  
22 her -- "took it upon ourselves to create time sheets on our own  
23 with respect to respite care for respite sheets?

24 "Yes.

25 "That was something not even you were saying Ms. Perry

*Closing - Defendant A. Perry*

2559

1 told you to do?

2 "No, she didn't.

3 "And that was a scheme you did under her nose, isn't  
4 it?

5 "Yes.

6 "So you would create false documents and lie in a way  
7 to hide it from Ms. Perry, wouldn't you?

8 "Yes.

9 "And when the respite was low, you would create time  
10 sheets to make it high?

11 "We did.

12 "And she never told you to do that?

13 "She didn't."

14 Now, if this witness would hide her own crimes in that  
15 fashion from Mrs. Perry, what would she hide from you as a jury?  
16 What would she hide and lie about on the stand in her own  
17 testimony to further her own benefit, to keep herself from being  
18 charged and going to jail?

19 Sarina Freeman. Immunized witness. These are -- all  
20 the witnesses that I'm naming are the key ones the government is  
21 asking you to convict Angela Perry on.

22 Sarina Freeman. Immunized witness. She inflated her  
23 respite care hours -- excuse me, inflated personal care aide  
24 hours so she could get certain monies kicked back to her. She  
25 admitted she would falsify information to benefit her own

*Closing - Defendant A. Perry*

2560

1 financial interests. She altered records, because she said if  
2 she didn't, she probably would lose her job. She admitted she  
3 would commit crimes in order to retain her job. She admitted  
4 that she was another -- that this was another example of her  
5 doing a dishonest thing to further her own personal interests.  
6 And here were the questions to her, Sarina Freeman:

7 "So if you would do those things, then you would  
8 certainly consider being dishonest to advance your own interests  
9 as an immunized witness in this case, wouldn't you?"

10 And she said "Yes". She said yes. She would do  
11 further dishonest things as an immunized witness to further her  
12 own interests in this case. Bingo. That's exactly the problem  
13 with these witnesses. You don't know where the truth begins and  
14 the lies end. There's no way to know. Reasonable doubt.

15 Now, we also asked her, she was asked on direct  
16 examination, excuse me, by the government, What did Mr. Perry  
17 tell her about respite care? And initially she said "I don't  
18 know what you want me to say." And then she stopped herself and  
19 said, "I know what you want me to say." Now, that's a witness  
20 telling the prosecutor "I know what you want me to say." And I  
21 questioned her about that. I said "You said that because there  
22 is certain information you're supposed to say, right?" She said  
23 "Yes".

24 "And that's because you signed this letter that  
25 requires you to cooperate with the government, right?"

1 "Yes.

2 "And you have to tell the testimony the way they  
3 expect it, correct?

4 "Yes."

5 What greater evidence could you have than to mistrust  
6 this kind of witness, who admits that they're saying what they  
7 think they have to say? Not what the truth is, but what they  
8 have to say to get their pass.

9 And I said to her, "The people who judge you are  
10 sitting at that table because they signed this letter?"

11 She said "Yes".

12 Now I then said to her: "You just told the ladies and  
13 gentlemen of the jury you were taking money that wasn't yours  
14 because you got paid so low?"

15 She said "Yes".

16 "You justified taking money from somebody else without  
17 their permission, because you were getting paid so low and  
18 thought that that makes it okay?

19 And she said "Yes".

20 Now ladies and gentlemen, if she concocts that  
21 rationale to justify stealing, "I wasn't getting paid enough so  
22 I can steal from somebody else," what would she do, what  
23 rationale would she concoct to lie on the stand? It's one right  
24 after the other. The same personality, the same character would  
25 bring her to lie, would bring her to exaggerate, would bring her

1 to embellish. How can we accept that kind of testimony?

2 Renita Jones, an immunized witness. Another one. The  
3 question to her was, "The bargain that you reached with the  
4 government in part includes if you do what letter says you need  
5 to do, then you wouldn't be prosecuted, correct?" And she said  
6 "Yes".

7 "By your own testimony, you altered certain documents,  
8 did you not?"

9 "Yes.

10 "That's a crime, isn't it?

11 "Yes.

12 "By your own testimony, you assisted aides in  
13 prosecuting" -- excuse me -- "processing for respite care hours  
14 they didn't work, correct?

15 "Yes.

16 "That's a crime, isn't it?

17 "Yes.

18 "So you committed crimes at Community Personal Care,  
19 did you not?

20 "Yes.

21 "And in order for you to testify without being  
22 prosecuted, this letter has to be in place?

23 "Correct.

24 "One of the understandings that you have with the  
25 prosecution about avoiding prosecution for your crimes is in

*Closing - Defendant A. Perry*

2563

1 Paragraph 2. It says, 'Fully cooperate with agents of federal  
2 law enforcement and investigative agencies', does it not?

3 "Yes.

4 "So that means that if they ask you to testify against  
5 Angela Perry, you have to do that in order to get this bargain,  
6 correct?" And she said "Yes".

7 "And you understand the prosecutors here are trying to  
8 convict Angela Perry?

9 "Yes.

10 "So you understand" -- this is to Renita Jones --  
11 "that your cooperation with them has to be consistent with their  
12 efforts to convict her?

13 "Yes.

14 "You've testified against Ms. Perry because you're  
15 obligated to, correct?

16 "Yes."

17 Now listen to this: "And if you don't say what you  
18 understand the truth is supposed to be, supposed to be, you  
19 could be prosecuted, correct?

20 "Right.

21 "And the persons who judge whether you have given  
22 truthful information or not is the prosecution, correct?

23 "Yes.

24 "You have to satisfy them to get the benefit of this  
25 letter, don't you?

1 "Yes."

2 Once again, the same theme: A witness who is not  
3 testifying because she's here to proffer the truth as an  
4 ordinary witness, but somebody with baggage who's got to say  
5 what she thinks needs to be said. You cannot take the liberty  
6 of another fellow citizen on the basis of that kind of evidence.

7 Allison Hunter-Evans. She is in an even more  
8 particular category, because she's not an immunized witness in  
9 the same sense, she actually pled guilty and signed a plea  
10 agreement. She hasn't been sentenced yet. So she's got all  
11 kinds of incentives to say things against Angela Perry that are  
12 exaggerated and embellished or just plain, flat, not true.

13 Instruction No. 19 will tell you about plea  
14 agreements. "In this case, there has been testimony from a  
15 government witness who pled guilty after entering into an  
16 agreement with the government to testify." That's  
17 Ms. Hunter-Evans. "There is evidence that the government agreed  
18 to dismiss some charges against the witness and agreed not to  
19 prosecute her on other charges in exchange for the witness's  
20 agreement to plead guilty and testify at this trial against the  
21 defendant. The government also promised to bring the witness's  
22 cooperation to the attention of the sentencing court."

23 Now here's what the court says further about this kind  
24 of witness: "You should bear in mind that a witness who has  
25 entered into such an agreement has an interest in this case



1 different than any ordinary witness. A witness who realizes  
2 that they may be able to obtain their own freedom or receive a  
3 lighter sentence by giving testimony favorable to the  
4 prosecution has a motive to testify falsely. Therefore, you  
5 must examine her testimony with caution and weigh it with great  
6 care."

7           Now, that's a warning flag. Witnesses who testify  
8 under plea agreements, who haven't been -- and haven't been  
9 sentenced yet have motives to falsify. She's looking at 20  
10 years as a maximum penalty in her case. That may not be what  
11 she will get, but the range is from zero to 20. And she knows  
12 that the more she satisfies this table, the greater the chance  
13 that at her sentencing they will speak favorably about her and  
14 she will get a light sentence, or a lighter sentence. That  
15 gives her every reason to fudge; every reason to say things that  
16 are not true in order to protect herself and satisfy what she  
17 thinks she's supposed to say.

18           Now, she admitted that she engaged in a substantial  
19 amount of dishonesty, and she admitted that he committed this  
20 dishonesty, again, for financial reasons. 45 dollars an hour.  
21 She admitted she engaged in this dishonesty to further her own  
22 financial interests. And I would submit to you, if she would do  
23 what she did there for \$45 an hour, what kinds of lies or false  
24 information would she give from the witness stand when she's  
25 looking at 20 years? Can you trust that witness? Absolutely

1 not.

2 She admitted that she would be dishonest to help  
3 herself.

4 Now, she has gotten certain things in exchange for her  
5 testimony already: Charges dismissed, she's been immunized from  
6 further prosecution, but she's still hoping for the big one,  
7 which is help with her sentencing.

8 Now before I talk about that, briefly I want to remind  
9 you too she has been convicted of a felony. And that's an  
10 important matter, because the court has told you in Instruction  
11 20 that "The testimony of a witness may be discredited or  
12 impeached by evidence showing that the witness has been  
13 convicted of a felony; a crime for which a person may receive a  
14 prison sentence of more than one year. Prior conviction of a  
15 crime that is a felony is one of the circumstances that you may  
16 consider in determining the credibility of that witness."

17 So what that means is that not only is she testifying  
18 under a plea agreement where you're warned that she may have a  
19 motive to falsify, but she's a convicted felon, and that makes  
20 her credibility something that you have to take into account  
21 when you weigh what she has to say.

22 Now, she testified as follows: "In order to get the  
23 benefit of the things you've gotten, you have to testify in  
24 accordance with this agreement, correct?

25 "That is correct.

*Closing - Defendant A. Perry*

2567

1 "And the people who determine whether you're  
2 testifying in accordance with this agreement are the  
3 prosecution, correct?

4 "That's correct.

5 "They are the ones you have to satisfy, correct?

6 "Those are the ones I entered into this agreement  
7 with, yes, sir.

8 "The ones trying to convict Mrs. Perry, correct?

9 "That's correct.

10 "The prosecutors decide whether you violate this  
11 agreement or not; is that correct?

12 "That's correct."

13 Now, her sentence is, as I told you, is authorized up  
14 to 20 years. She hasn't been sentenced yet. Here's what she  
15 had to say about that: "And you hope, by saying the things  
16 you've said today, you will help yourself at sentencing,  
17 correct? By testifying?

18 "Yes, sir.

19 "So you understand the plea agreement that, if you do  
20 what you're doing, they're going to help you?

21 "Yes, sir."

22 Now, we also asked her, "You also understand that one  
23 of the factors in your sentencing will be what's called the  
24 sentencing guidelines?

25 "Yes, sir.

*Closing - Defendant A. Perry*

2568

1 "You understand that the guidelines are a range from a  
2 low end to a high end in terms of a recommendation of the actual  
3 time of confinement?

4 "Yes, sir.

5 "And you understand that, under certain circumstances,  
6 the government can ask a judge to go below the guidelines?

7 "Correct. Yes, sir.

8 "And a downward departure" -- which is what that's  
9 called, going below the bottom end of the sentencing guideline  
10 -- "is going below the low end of the sentencing guidelines,  
11 correct?

12 "Yes, sir.

13 "And this says" -- the plea agreement, and I'm  
14 quoting -- 'the parties agree that the United States reserves  
15 the right to seek any departure from the applicable sentencing  
16 guidelines', correct?

17 "Yes, sir.

18 "If, in its sole discretion, the United States  
19 determines that such a departure or reduction of sentence is  
20 appropriate?

21 "Yes, sir.

22 "So you understand" -- this is Ms. Hunter-Evans --  
23 "that the only party that can ask for a downward departure from  
24 the sentencing guidelines bottom end is the prosecution?

25 "Yes, sir.

*Closing - Defendant A. Perry*

2569

1 "And you hope to get that reduction?

2 "Yes, sir.

3 "And they're the only ones that can ask for it,  
4 correct?

5 "That's correct."

6 Now, ladies and gentlemen, I just outlined for you  
7 five witnesses or so whose testimony is crucial to the  
8 government's case against Angela Perry. Crucial. You cannot  
9 accept that testimony beyond a reasonable doubt. And what it  
10 does further, it infects and affects the rest of the case  
11 against Angela. Because if these witnesses would say these  
12 things, we really don't know who else might be fudging and lying  
13 and saying what they think they need to say even without an  
14 immunity agreement.

15 An analogy I'll use from our daily lives, if we order  
16 a bowl of soup in a restaurant, and it shows up and there's a  
17 fly in the soup, we look at that and we don't take the fly out  
18 and pour the little part out where the fly was and then eat the  
19 rest. If the fly is in the soup, we don't know whether the  
20 whole bowl has been affected. That is the same problem with  
21 this evidence. This soup of evidence the government has served  
22 up has a fly in it, these witnesses we've talked about. And we  
23 don't know how deep and how wide and how far this type of  
24 embellished testimony goes. You cannot trust the government's  
25 case with these kinds of witnesses embedded in it any more than

*Closing - Defendant A. Perry*

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1 you can trust the rest of that soup that you found the fly in.

2 We've talked about the immunized witnesses and their  
3 motives to falsify and who they want to please and why they  
4 would say what they say. But let's look at another facet of  
5 credibility: What's called prior inconsistent statements. We  
6 know from living life, if you talk to somebody and they tell you  
7 one thing on one occasion about a certain matter, and then the  
8 next day they tell you something totally different about the  
9 same matter, you're going to kind of scratch your head and  
10 wonder, is this person really somebody I can rely on? They're  
11 telling me two different things about the same thing. That's  
12 just common sense. Well, when it happens in the courtroom, it  
13 affects the witness's believability. It's something you can  
14 consider in determining whether a witness is telling the truth  
15 or not.

16 Instruction No. 13 will tell you, "The testimony of a  
17 witness may be discredited, or what we sometimes say impeached,  
18 by showing that he or she previously made statements which are  
19 different than or inconsistent with his or her testimony here in  
20 court. If a person is shown to have knowingly testified falsely  
21 concerning any important or material matter, you obviously have  
22 a right to distrust the testimony of such an individual  
23 concerning other matters."

24 Now, that means that if we can show you witnesses who  
25 said different things about the same subject on different

*Closing - Defendant A. Perry*

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1 occasions, that's another facet of their credibility that causes  
2 us to distrust them and find that there's not proof beyond a  
3 reasonable doubt with those kinds of witnesses.

4           Now, Mrs. Lindsey, it was interesting. She told us  
5 that she left the company because she was afraid that she might  
6 get caught up in some questions. And she said I did know there  
7 were things that I was doing I was not supposed to and I knew  
8 that it was time to get away from that. So she's leaving the  
9 company because she doesn't like it, she doesn't want to be  
10 there, she doesn't want to do these things. But then she writes  
11 a letter. This is what she said in court under oath, but then  
12 she writes a letter to Mr. Perry and it says "It has truly been  
13 a pleasure meeting all of the wonderful people I have  
14 encountered, as well as having a wonderful place to work for the  
15 past eight years. I feel I have grown, matured and achieved all  
16 I can with Community Personal Care." And then she says as a PS,  
17 "I am available for continued billing on a part-time basis  
18 should you be interested."

19           Now, she's told you under oath that she left that  
20 company because she was doing things she didn't think she should  
21 do and she was worried she was going to get caught, but then she  
22 sends a letter praising the company and Mr. Perry, and saying  
23 I'm ready to come back if you want me. Now, which one is it?  
24 Is it that she really was worried about being there and didn't  
25 want to work, or does she really want to go back and work? You

1 don't know. That's an inconsistent series of statements.

2 That's the kind of witness you can't trust.

3 And here's what I asked her: "So you would have taken  
4 that up, that part-time job, if he had offered it, wouldn't you?

5 "Depending on what the offer was, possibly.

6 "So then what you told this jury just a few minutes  
7 ago that you left the company because you know things were wrong  
8 is not true?

9 And she said, "That's not what I told -- I said I left  
10 the company because there was no more room for advancement, and  
11 I was not going to be able to make any more money than I was  
12 there, so I was leaving the company."

13 Then she adds in, "And I said I had a feeling  
14 something bad was coming that I did not want to have to answer  
15 questions for."

16 All over the board about it. We don't know why she  
17 left. We don't have any idea from what she said which one it  
18 is. If she'd lie about that, something that important in her  
19 own personal life, she would lie about other things. You cannot  
20 trust these witnesses.

21 Sarina Freeman. During the audit preparation weekend  
22 she testified that she claimed to have raised a concern with  
23 Mrs. Perry that there were too many different handwritings and  
24 that supposedly Ms. Perry said to her to try to use the same  
25 colored ink or get the handwriting as good as you could. But



*Closing - Defendant A. Perry*

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1 then we brought to her attention -- she's been interviewed prior  
2 to this trial five times by law enforcement; four by the FBI,  
3 October 24, March of 2013, December of 2012, and November of  
4 2012, and by Mr. Pelletier of the Medicaid Fraud Control Unit in  
5 December of 2012. Five times she had an opportunity to tell  
6 those investigators what she just said to you in court about  
7 supposedly Mrs. Perry having this conversation. And here's what  
8 we found.

9 "Question: Isn't it a fact, Ms. Freeman, that in none  
10 of those interviews did you ever tell the story you told in this  
11 courtroom yesterday that Ms. Perry was told there were too many  
12 different handwritings and she said use the same colors of ink  
13 and get the handwriting good?

14 "Answer: They didn't ask me."

15 Now ladies and gentlemen, that's stated by a true  
16 liar. "They didn't ask me." There are five interviews, all  
17 about this very subject. That's the first thing that would come  
18 out of your mouth. "Well, Ms. Perry came to me and she saw  
19 these handwritings and they were different." But she never told  
20 anybody that. Five times. Now she's telling you. She's trying  
21 to sell us a bill of goods. She's embellishing. She's adding.  
22 She's trying too hard to say what she thinks she has to say.

23 And we also caught her in a bald-face lie. She said  
24 that Mrs. Perry signed a man named Christopher Leach's name to a  
25 time sheet. He was a patient. And I asked her, "And you're

*Closing - Defendant A. Perry*

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1 sure about that?

2 "Yes, I am.

3 "You saw that with your own two eyes that day, that  
4 audit weekend?

5 "Yes, I saw that.

6 "You're as sure about that as everything else you've  
7 told us?

8 "Yes, I am."

9 Absolutely sure that she saw Ms. Perry sign  
10 Christopher Leach's name. And then I asked her -- excuse me,  
11 she testified -- then I brought to her attention March 11th,  
12 2013 interview to Investigator Pelletier with Agent Wright  
13 present, she said something different about that. She said she  
14 saw Mrs. Perry forge the name of Christopher Leach's mother.  
15 Totally different story. Not Christopher Leach, but his mother.  
16 And she said, when we caught her in that, she said "You're  
17 right. I did tell them that is not Christopher Leach, because  
18 he can't sign."

19 And the question I asked her was: "You just told us  
20 about two minutes ago the same thing. I asked you if you saw  
21 with your own two eyes that she signed the name Christopher  
22 Leach and you said yes, remember?"

23 She said "Yes".

24 "You swore to that, didn't you?

25 "Yes.

*Closing - Defendant A. Perry*

2575

1 "Now you're saying you were wrong, correct?

2 "Yes."

3 How can you trust these witnesses? They're all over  
4 the board.

5 Vernice Spain. "Question: You did not tell the FBI  
6 when you were first interviewed that Ms. Perry instructed you to  
7 do these things that you've told us about today?"

8 Her answer: "No. Not when I was first interviewed,  
9 no.

10 "And that story changed later, didn't it?

11 "Yes.

12 "So we have to believe that your story -- we have to  
13 believe that your story, when it changed, is the real story?

14 "It is."

15 What story is it? She's tells the FBI one thing,  
16 doesn't mention -- the whole case is about Ms. Perry allegedly  
17 directing and instructing these things. She doesn't say that to  
18 the FBI. Then she comes into court and conveniently says it.  
19 How can you accept that kind of witness beyond a reasonable  
20 doubt? It can't be done. Nobody should be judged on that kind  
21 of testimony.

22 And then Sabrena Tabron. They proffer her as a  
23 witness against Ms. Perry. Question to her was: "You told us  
24 with respect to this conversation that you say today you heard  
25 Ms. Perry talking to Mr. Perry, you do acknowledge that you

*Closing - Defendant A. Perry*

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1 didn't actually say that when you first talked with the FBI,  
2 correct?

3 "Answer: Correct.

4 "So that's something that's different today than what  
5 you told them initially, correct?

6 "Correct."

7 She admits she testified about a conversation she  
8 claims she saw Ms. Perry have on the phone with Mr. Perry, and  
9 certain instructions given after, but she never told the FBI  
10 about that and admits that her testimony in this trial is  
11 different than what she told them. It's just stacking up. I  
12 could go on and on. There was so much of this in this case, it  
13 is unfair to ask a jury to convict a fellow citizen on that kind  
14 of evidence. It's simply not -- it's not appropriate.

15 And she's the one, Ms. Tabron, who said at trial she  
16 looked at 20 to 30 charts -- bless you --

17 JUROR: Thank you.

18 MR. SACKS: -- even though there were only 10 that  
19 were supposed to be audited. Looked at 20 to 30. But then she  
20 told the FBI, I looked at two to five charts. Which one is IT  
21 Ms. Tabron? Why do we have to guess at that?

22 The government has the burden of proving this case,  
23 and if they leave it open with all these questions and  
24 inconsistencies, they can't expect the jury to find somebody  
25 guilty on that.

*Closing - Defendant A. Perry*

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1 Allison Hunter-Evans. At trial she said she spoke to  
2 Ms. Perry on Saturday, but she didn't know what time, but she  
3 told the FBI that it was Saturday morning. And we know that's  
4 not possible. Witness after witness has come in,  
5 uncontradicted, basically, testifying about Ms. Perry's mother's  
6 birthday. I know that may seem trivial, but we brought the  
7 hairdresser in, we brought the party planner in. We want you to  
8 know it really happened just the way Angela said. And she  
9 wasn't at that office on Saturday until the evening. She wasn't  
10 there. If this grand scheme is going on, wouldn't she be posted  
11 like a hawk, watching everything, making sure those charts get  
12 right? She was off at a birthday. She wasn't concerned,  
13 because she didn't know. She hadn't instructed anybody to do  
14 what some of these people were doing.

15 Ms. Hunter-Evans is flat either wrong or lying. She  
16 said she saw her Saturday morning and had a conversation with  
17 her. That couldn't be possible. And if that isn't possible,  
18 what else has Ms. Hunter-Evans said that can't be true?

19 THE COURT: Mr. Sacks?

20 MR. SACKS: Yes, Your Honor?

21 THE COURT: I just want to help you keep track. You  
22 have five minutes left.

23 MR. SACKS: All right, your Honor. Thank you.

24 Now ladies and gentlemen, I would also offer to you  
25 the instruction about character evidence, because in this case

1 the defendant -- the instruction says "The defendants have  
2 offered evidence of their good general reputation for honesty,  
3 integrity and being law-abiding persons. The jury should  
4 consider this evidence, along with all the other evidence in  
5 this case, in reaching its verdict. Evidence of a defendant's  
6 reputation inconsistent with those traits of character  
7 ordinarily involved in the commission of the crimes charged may  
8 give rise to a reasonable doubt, since the jury may find it  
9 improbable or unlikely that a person of good character for  
10 honesty, integrity and being a law-abiding person would commit  
11 such crimes." That's a reasonable doubt about Angela Perry. We  
12 brought you five people, Reverend Anthony Copeland, 32-year  
13 pastor, known Angela for 18 years, testified she has a  
14 reputation for honesty and integrity.

15 Hattie Williams, a 26-year Navy Exchange employee has  
16 known Angela Perry more than 50 years. Honest and truthful is  
17 her reputation.

18 Horace Savage with Portsmouth Schools for 37 years,  
19 and assistant superintendent, a principal in two schools, has  
20 known Ms. Perry for 46 years, impeccable reputation.

21 Kathy Bell, a Verizon employee for 29 years, has known  
22 Angela for 51 years, holds her in high regard. "Go to Angie if  
23 you want to know the truth."

24 And Reverend Warren Amlet, a pastor for 24 years, has  
25 known Angela 35 years, and has testified her reputation is

1 honest, a person of integrity.

2 People like Angela Perry, good and decent people, do  
3 not do these kinds of things. There is a reasonable doubt based  
4 on that alone, that alone, that she would do anything like this.  
5 And her character is not of that type.

6 Now, she testified -- she didn't have to, but she  
7 did -- and I submit to you her testimony was frank, sincere,  
8 truthful. These character witnesses said they would have no  
9 hesitation believing her under oath, and you should have no  
10 hesitation either. I submit to you her denials that she  
11 instructed anybody or directed anybody ring loud and true in  
12 this case.

13 Now ladies and gentlemen, in wrapping up, I want to  
14 bring to your attention one last matter. The court has  
15 instructed you that the good faith of an individual is a  
16 complete defense to the charges contained in the superseding  
17 indictment, because good faith on the part of a defendant is  
18 simply inconsistent with the intent to defraud or to obtain  
19 money by false or fraudulent pretenses, representations or  
20 promises alleged in these charges. "A person who acts on belief  
21 or an opinion honestly held is not punishable under this statute  
22 merely because the belief or opinion turns out to be inaccurate,  
23 incorrect, or wrong. An honest mistake in judgment or an honest  
24 error in management does not rise to the level of criminal  
25 conduct."

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1 Allison Hunter-Evans was the point person at that  
2 audit weekend, not Angela Perry. Here is Allison Hunter-Evans  
3 testimony:

4 "This is an email that you identified from you to Mrs.  
5 Perry about the audit weekend?

6 "Yes, sir.

7 "And in the third line of that memo you say 'Sorry I  
8 took so long to put a proposed game plan in place, but here it  
9 is'?

10 "Yes, sir.

11 "You're the one who came up with the proposed game  
12 plan, were you not?

13 "Yes, sir.

14 "Mrs. Perry didn't come up with it, did she?

15 "No, sir, she did not."

16 Now listen to this: "In reading this memorandum, this  
17 email, there isn't anything in this email that specifically says  
18 or sets out or instructs someone to do something that is a  
19 crime, is there?

20 "No, sir."

21 And then she said, "Isn't it true that, as far as you  
22 know, Ms. Perry had no specific employment with Medicaid like  
23 you had?

24 "As far as I know, no, sir.

25 "But you did work for Medicaid, didn't you?



*Closing - Defendant A. Perry*

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1 "Yes, sir.

2 "How many years?

3 "Three years.

4 "So you had a wealth of knowledge about the rules and  
5 regulations, didn't you?

6 "Yes, sir.

7 "And Mrs. Perry was relying on you to tell her what  
8 was right and what was wrong, wasn't she?

9 "She was relying on me, yes."

10 Good faith. Angela Perry relied on Allison  
11 Hunter-Evans to do the right thing, and she didn't do it. And  
12 that's not Angela's fault. Angela relied in good faith, and  
13 that's a defense to these charges, and that itself raises a  
14 reasonable doubt about any criminal intent.

15 Now in conclusion, ladies and gentlemen, I would tell  
16 you this: I'm told the word "verdict", comes from Latin, means  
17 "To speak the truth." And the truth, ladies and gentlemen, in  
18 this case, is that the charges against Angela Perry have not  
19 been proven beyond a reasonable doubt. Far from it. I have  
20 attempted to bring to your attention the highlights of that.  
21 You will have your own reasonable doubts as you go in the jury  
22 room. But if you speak the truth through your verdict, the  
23 truth is that the government has failed its burden in this case  
24 against Angela.

25 Now, when I sit down in about one minute, the

*Closing - Government Rebuttal*

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1 government is going to get up to this podium and have a rebuttal  
2 argument. They get the last word because they have the burden  
3 of proof, and they're given that opportunity to persuade you one  
4 last time. When Mr. Salsbury stands up here and I sit down, you  
5 should think right there this is the physical embodiment of the  
6 burden of proof that the government has. And try as they may --  
7 they will try to respond to what I have said by Angela Perry --  
8 but try as they may, they will not be able to overcome it,  
9 because the evidence and the law will not allow it.

10 THE COURT: Thank you, Mr. Sacks.

11 MR. SACKS: This is a case with reasonable doubt, and  
12 I would ask you to return a verdict of not guilty on all charges  
13 against Ms. Angela Perry.

14 THE COURT: Thank you, Mr. Sacks.

15 MR. SACKS: Thank you, Your Honor.

16 Mr. Salsbury?

17 MR. SALSBUARY: Thank you, Your Honor.

18 I've never been called a physical embodiment of  
19 anything, so I found that interesting.

20 Ladies and gentlemen, this is my opportunity to rebut,  
21 or to counter, the things you've heard from the defense  
22 attorneys, to show you what they have said is absolutely wrong,  
23 and I intend to do just that. And I have a time limit, so I'm  
24 going to talk rather fast. So let's get right to it, and I'll  
25 break this down into categories.

1           Quickly, on the reasonable doubt instruction, it's  
2 interesting how Mr. Davis and Mr. Sacks quote selected portions  
3 of the reasonable doubt instruction. The one thing they don't  
4 quote from that instruction is the following: "It is not  
5 required that the government prove guilt beyond all possible  
6 doubt; the test is one of reasonable doubt." That's the test.

7           All right. Next category, the contention by the  
8 defense that the real criminals are the employees. Defense  
9 would have you believe that Wayne Perry and Angela Perry are  
10 just as innocent as can be, and that the real bad guys are their  
11 employees. Now think about that. A number of these employees  
12 that have come before you, they have admitted their wrongdoing.  
13 And what did they get out of the billing scheme that was put in  
14 place by Wayne Perry and Angela Perry? A carton of cigarettes.  
15 A Coach handbag. Some money, yes, but in amounts that pale in  
16 comparison to the enormous amount of money that Wayne Perry and  
17 Angela Perry got as a result of cheating the Medicaid program.

18           Yes, several of these employees have been granted  
19 immunity. And the defense would have you believe that means you  
20 can't trust what they say. But the exact opposite is true.  
21 Their immunity is conditioned on telling the truth. Not the  
22 truth as I see it or Ms. O'Boyle sees it, but the truth. And  
23 Mr. Sacks went through all the questions he asked these  
24 immunized witnesses, but he never reviewed the last question he  
25 asked every one of them, "And that means because of the

1 wrongdoing you've agreed you've committed, you would not tell  
2 the truth today, or you would falsely testify today." And every  
3 single one of them said "I'm telling the truth. I'm not telling  
4 the truth as anyone wants me to or as anyone sees it, I'm  
5 telling the truth."

6 And remember, there's not just one witness who has  
7 immunity. There are several. They have all implicated Wayne  
8 Perry and Angela Perry. The judge has never told you that you  
9 should not believe an immunized witness. He has never told you  
10 that.

11 And remember this: There have been a number of former  
12 employees who have not been given immunity but have said the  
13 same thing, the same thing as the ones who were given immunity.  
14 Betty Banks and Sabrena Tabron, for example. They don't have  
15 immunity, but they said the same thing the others said: That  
16 they fixed the time sheets at the direction of Wayne Perry and  
17 Angela Perry. And we'll talk more about that in a few minutes.

18 Sherrice Ford testified she was directed to falsify  
19 time sheets, but she refused to do it.

20 Now, when Sarina Freeman tells you she didn't regard  
21 herself as stealing from Mr. Perry, it really does make some  
22 sense. Because how do you steal from the very person who put  
23 the fraudulent billing scheme into place? Wayne Perry was that  
24 person. How do you steal from a cheater? It's why Tamika  
25 Nichols said she thought the termination letter she received

1 from Wayne Perry was unfair. He accused her in that letter of  
2 taking money she was not entitled to. But as she said, it  
3 wasn't my idea, and it wasn't her idea. It wasn't her idea to  
4 run the respite by preparing and submitting false respite time  
5 sheets to Medicaid, it was Wayne Perry's idea.

6 We're all familiar with the concept of a scapegoat.  
7 What is a scapegoat? It's a person who is blamed for the  
8 wrongdoing of others in order to distract attention from the  
9 real perpetrators. In this case, the defense has made  
10 scapegoats out of the former employees in order to blame them  
11 for the crimes of Wayne Perry and Angela Perry. It is an  
12 attempt to divert your attention from the crimes that they  
13 committed. Using the former employees as scapegoats is an  
14 effort by Wayne Perry and Angela Perry to evade responsibility  
15 for their own crimes. They have been made scapegoats by the  
16 Perrys.

17 Now let's talk about consciousness of guilt; actions  
18 taken by Wayne Perry that show he was fully aware of his own  
19 guilt.

20 One: Immediately after the search warrant when he  
21 knew that an investigation was taking place, he told Artincy  
22 Hobbs to stop billing for personal care services by the plan of  
23 care and to bill by the actual time worked by the personal care  
24 aides. That absolutely shows he knew what he had been doing was  
25 fraudulent. And remember, before the search warrant, he had

1 always directed that personal care services be billed by the  
2 plan of care, even though he had been told by numerous persons  
3 it was wrong.

4 And also recall that for one week he agreed to bill by  
5 the actual time worked instead of the plan of care, but then  
6 went right back to the plan of care because he saw it brought in  
7 much more money. But after the search warrant, and only after  
8 the search warrant, did he switch the billing for actual hours  
9 worked, which, as you saw from one of the summary charts, caused  
10 the bills to go way down. That's consciousness of guilt.

11 Two: Firing his employees right after the search  
12 warrant as if he then knew for the first time they had submitted  
13 false time sheets. He knew on an ongoing basis that those false  
14 time sheets were being billed to Medicaid and was bringing him  
15 hundreds of thousands of dollars. He didn't care until the  
16 search warrant was conducted and he knew that an investigation  
17 was taking place, so then and only then did he quickly fire a  
18 few employees for doing what he had known for years had been  
19 going on. Consciousness of guilt.

20 Three: The effort by Wayne Perry to take up state  
21 embezzlement charges against Vernice Spain, Sarina Freeman and  
22 Sarina's daughter Shavonne. You heard from Detective Flengas of  
23 the Norfolk Police Department. In April of this year, just a  
24 few months ago, Wayne Perry went to the Detective Flengas and  
25 tried to take out those charges. Conveniently, conveniently, he

1 failed to mention that he himself was under indictment,  
2 something the detective said he would like to have known. But  
3 also consider this: Wayne Perry terminated Vernice Spain and  
4 Sarina Freeman in December, 2012. He could have tried to take  
5 out state charges against them way back then, at that time. But  
6 he didn't go to see the detective until just a few short months  
7 ago, shortly before this trial was to begin.

8 As the detective said, had he elected to investigate,  
9 he would have questioned Vernice Spain and Sarina Freeman as  
10 suspects. Wayne Perry knew this, and this was nothing more than  
11 an effort on his part to intimidate Vernice Spain and Sarina  
12 Freeman and perhaps discourage them from testifying against him.  
13 Consciousness of guilt.

14 Four: Using Allison Hunter-Evans and her contacts in  
15 an underhanded way to find out when the Clifton Gunderson audit  
16 was going to take place. Information he was not entitled to.  
17 You saw those emails. He knew there would be plenty of work to  
18 do to alter records before that audit took place, so it was  
19 important for Wayne Perry to know when Clifton Gunderson would  
20 be coming, because he knew a lot of record alteration had to  
21 take place, and he had to prepare for it. Consciousness of  
22 guilty.

23 Let's talk more about Wayne Perry. And what I'm  
24 referring to now are some things he said in his testimony that  
25 are clearly false that nearly defy belief.

1 Mr. Perry denies billing by the plan of care, even  
2 though witness after witness has testified he did it, even after  
3 being cautioned against it. He seems to have been very fond of  
4 Nurse Linda Hanson. Well, she said she knew that Wayne Perry  
5 billed by the plan of care and that she discussed it with him  
6 several times, to no avail.

7 And another he said to you that is clearly untrue: He  
8 said he never knew that Allison Hunter-Evans was working on  
9 DMAS-90s and putting sticky notes on them for the employees to  
10 alter records. Do you really believe that, ladies and  
11 gentlemen? All the weekends before and after the March 2011  
12 weekend that Ms. Ms. Hunter-Evans was on the premises, and  
13 especially that long weekend in March, and he tells you he had  
14 no idea she was working on DMAS-90s? He's not being truthful  
15 when he says that. This comes from someone who ran around the  
16 office and said "fix my records", and everyone knew what he  
17 meant by that, which was to alter them as dictated by  
18 Ms. Hunter-Evans Post-It Notes. He wasn't paying her \$45 an  
19 hour for nothing. He was doing it to alter the DMAS-90s in  
20 order to conceal his fraudulent billing practices from Medicaid  
21 so he wouldn't have to pay money back. It wasn't just to work  
22 on nurses' notes.

23 And if not billing by the plan of care, why did he  
24 direct employees to alter records to match the plan of care?

25 And let's talk about why Sarina Freeman wasn't fired



1 by Wayne Perry until after the other search warrant, even though  
2 other employees had complained to him about her. He said it was  
3 because she was really good at making the personal care aides  
4 show up for work, and that was more important than the many  
5 complaints against her. Does that even make sense? No, it  
6 doesn't. She wasn't fired until after the search warrant  
7 because Wayne Perry knew she was doing exactly what he wanted:  
8 Submitting false respite time sheets that were being billed to  
9 Medicaid and bringing huge amounts of money to him. It was only  
10 after the search warrant when Wayne Perry knew he might really  
11 be in trouble that he fired her.

12 Ms. Freeman said herself when she was asked on  
13 cross-examination by Mr. Perry's attorney, "I only did what your  
14 client instructed me to do." And that's the truth.

15 The DMAS-90 time sheets. You heard Artincy Hobbs, one  
16 of the billers, tell you that the half-baked measures like the  
17 inter-office communications were completely insufficient to bill  
18 for actual hours worked. There was no way she could keep up  
19 with the discrepancies. Not even close.

20 What's more, she told you that the Generations program  
21 could have been used before the search warrant to show the  
22 actual time worked by the aides according to the DMAS-90s, and  
23 that it could have been more accurate than billing by the plan  
24 of care, but Wayne Perry refused to allow that until the search  
25 warrant, when he knew that an investigation was taking place.

1 Primary caregivers. Mr. Davis did everything he could  
2 to spin it and to twist the facts that there was no fraud here  
3 with respect to several of the cases involving primary  
4 caregivers, but he cannot get away from the facts. For example,  
5 Michael Mullen has lived in Maryland for decades while his  
6 mother, Elizabeth Mullen, lived here in Norfolk. Mr. Mullen,  
7 you will recall, testified he never told anyone at Community  
8 Personal Care that he was his mother's primary caregiver; that  
9 in fact he was not his mother's primary caregiver; that no one  
10 at Community Personal Care ever spoke with him about respite  
11 care; that he never requested respite care; that he didn't even  
12 know what respite care was. And you might remember that he  
13 certainly -- he said this with a chuckle -- he certainly needed  
14 no relief from caring for his mother, because he lived in  
15 Maryland while she lived in Norfolk. And yet, as you've seen,  
16 respite care services were billed to Medicaid. That's fraud.

17 Likewise, William Hatton, the son of Lucille Hatton,  
18 testified that he never told anyone that he was his mother's  
19 primary caregiver; that he has never been his mother's primary  
20 caregiver; that no one at Community Personal Care ever spoke  
21 with him about respite care; that he never requested it, didn't  
22 even know what it was. And yet, as you've seen, respite care  
23 services were billed to Medicaid. That's fraud.

24 And then there was Renee Faulkner, the aunt of Casey  
25 McCook, the shooting victim. She told you that when Mr. McCook

1 was released from rehabilitation in Richmond, he moved back to  
2 his own residence here locally. She said she was not his  
3 primary caregiver, and she knows what one is, because she's a  
4 Medicaid provider herself. She said she never advised anyone at  
5 Community Personal Care that she was Mr. McCook's primary  
6 caregiver; that she never requested respite care services; that,  
7 in fact, she never had any contact whatsoever with anyone at  
8 Community Personal Care, and that to her knowledge, Mr. McCook  
9 lived alone in his own residence and did not have a primary  
10 caregiver. And yet, as you've seen, respite care services were  
11 billed to Medicaid. That's called fraud.

12 Let's talk semantics. The defense likes to say that  
13 Wayne Perry never used the exact phrase "falsify the respite  
14 time sheets." He didn't have to. It was more than enough to  
15 say "run the respite", "burn the respite", "get my numbers up",  
16 "fix my records", "do what I say or you'll be fired". Everyone  
17 knew what this meant. When Angela Perry said that Wayne needed  
18 an additional \$40,000, everyone knew what that meant. The only  
19 way to get it was to falsify respite time sheets. And Renee  
20 Neighbors noted that, at a staff meeting, Wayne Perry referred  
21 to respite as "his respite". And the only way to "fix" records,  
22 ladies and gentlemen, to "fix" them, is to alter them.

23 And Renee Neighbors also said Wayne Perry told her and  
24 others to sign and back date-time sheets.

25 And another employee, Betty Banks, I believe,

1 testified that Wayne Perry said at a staff meeting that respite  
2 was nothing more than quote, unquote "dollars sitting there."

3           The defense says that Wayne and Angela Perry never  
4 used the exact word "falsify", and therefore they're not guilty.  
5 When you direct false billing, when you direct the alteration of  
6 records, that conduct speaks for itself. Your careful use of  
7 words cannot insulate you from your crimes.

8           Common sense. The judge has told you, you can use  
9 your common sense. Well, common sense tells you a lot in this  
10 case. Common sense tells you that the Perrys knew full well  
11 about the false billings and alteration of records that they  
12 themselves put into place. In fact, remember the testimony of  
13 Tamika Nichols, who said that, when she asked Wayne Perry how he  
14 knew she had come in to work one weekend, he said that he knew  
15 everything that went on in his company; that nothing got past  
16 him. And yet now Mr. Perry says he was blissfully unaware of  
17 all the fraud that was going on all around him. That defies  
18 common sense.

19           Let's talk Angela Perry. She was heavily involved in  
20 this fraud. It doesn't matter if she wasn't the owner. It  
21 doesn't matter if she wasn't the named provider. That doesn't  
22 mean she can't commit fraud, just like the defense has been fond  
23 of saying about the other employees. She was the one who  
24 supervised the staffing coordinators, and she was the one who  
25 said Wayne Perry needed a certain amount of dollars on his

1 respite billing, \$40,000 to be exact. She even tried to  
2 carefully conceal the alteration of records that she directed.  
3 Remember that testimony of Sabrena Tabron, who did not receive  
4 immunity. She said that Angela Perry even told her when she  
5 altered records she use a pen with the same color as the color  
6 already written on the time sheet. Mr. Sacks says, well, she  
7 only looked at five charts or so when they pulled 10. Mr. Sacks  
8 was mistaken. This audit Sabrena Tabron did was in 2008. 2008,  
9 well-ahead of the 2011 audit by Clifton Gunderson.

10 As Renita Jones told you, Angela Perry told her not  
11 just to add comments, but to back-date times sheets to make it  
12 appear that the comments had been written down on the actual  
13 date of the visit to the patient. And this included time sheets  
14 for Mary Jenkins, who was not even Renita Jones' patient.

15 Angela Perry told Sarina Freeman to do her best when  
16 Sarina pointed out there were too many different handwritings on  
17 one of the time sheets that she had been instructed by Ms. Perry  
18 to "alter".

19 Vernice Spain testified that it was Angela who  
20 directed her to change the times on personal care time sheets to  
21 match the billing based on plan of care, and even to create new  
22 time sheets when necessary.

23 And there are other witnesses who implicate Angela  
24 Perry. There's Lillie Bryant, who was artistic and forged  
25 signatures. Angela Perry told Artincy Hobbs to make sure to

1 give time sheets to Lillie to forge signature, because she was  
2 artistic. As Lillie said in her testimony, she didn't think she  
3 needed to tell Angela Perry she was forging signatures. And why  
4 would that be, ladies and gentlemen? Because Angela Perry was  
5 there that weekend, in charge and observing what was going on.  
6 She gave her instructions to the staff on Friday and she dropped  
7 by on Friday night, Saturday night, and again on Sunday to make  
8 sure her instructions were being carried out. It doesn't matter  
9 that she attended her mother's birthday party on Saturday.

10 Remember, among other witnesses, Sherrice Ford,  
11 another person with no immunity, said that Angela Perry was in  
12 charge that weekend. And what happened that weekend was the  
13 fraudulent alteration of DMAS-90 time sheets.

14 You've heard numerous former employees, and of course  
15 Allison Hunter-Evans, say that Angela Perry directed the  
16 alteration of records, even before the March 2011 weekend,  
17 during that weekend, and even continuing after that weekend.  
18 You would have to disbelieve all of these witnesses to conclude  
19 that Angela Perry did not direct the alteration of records.

20 And remember, Angela Perry admitted when she was  
21 cross-examined that the 10 charts identified by Clifton  
22 Gunderson could have been pulled out and put in a cart in 10  
23 minutes. That's what should have been done, because alterations  
24 are not permitted before an audit, as JoAnn Hicks from Clifton  
25 Gunderson told you. Instead, Angela Perry directed the

1 alteration of records by employees that began on a Friday and  
2 didn't end until Sunday. And it was Angela Perry who admitted  
3 that billing by the plan of care is a fraud on Medicaid.

4 And they talk about how Allison Hunter-Evans wasn't  
5 telling the truth. Well, she was, and Angela Perry even  
6 admitted to an extent about that conversation with Allison  
7 Hunter-Evans talking about billing by the plan of care would be  
8 the death of Wayne Perry.

9 And I don't want you to forget one of the instructions  
10 that the court gave you. The title of it is Conspirator's  
11 Liability for Substantive Counts. Conspirator's Liability for  
12 Substantive Counts. "A conspirator is liable for the crimes  
13 committed by another co-conspirator if those crimes were  
14 committed during a conspiracy and in furtherance of the  
15 conspiracy." The evidence shows that Angela Perry and Wayne  
16 Perry were co-conspirators, and that makes Angela Perry not only  
17 criminally responsible for the conspiracy count and the  
18 alteration of records count, which the evidence clearly shows,  
19 but also for all the billing offenses committed by Wayne Perry  
20 as charged in those counts. She is as guilty as he is.

21 Let me conclude, ladies and gentlemen, by again  
22 reminding you, Angela Perry and Wayne Perry are not charged in  
23 the superseding indictment with violating Medicaid regulations.  
24 They're charged with violations of federal criminal law  
25 including, as you have heard, conspiracy, healthcare fraud,

1 false statements relating to a healthcare matter, alteration of  
2 records and aggravated identity theft. The evidence shows they  
3 committed these offenses. And when Wayne Perry and Angela Perry  
4 testified, ladies and gentlemen, they did so in an effort to  
5 deceive you. To con you. Just like they deceived and conned  
6 the Virginia Medicaid Program. Don't let them deceive you.  
7 Don't let them con you.

8 Allison Hunter-Evans accepted responsibility for her  
9 crimes by pleading guilty, and now you can hold Wayne Perry and  
10 Angela Perry accountable for their crimes by finding them guilty  
11 as charged.

12 Contrary to what Mr. Davis told you, Ms. O'Boyle and I  
13 do not think you're superficial.

14 I resented that comment.

15 We have the greatest respect for you. And we believe  
16 that when you review the evidence and the facts, you will find  
17 the defendants guilty as charged, and on behalf of the United  
18 States, I urge you to do so.

19 Thank you.

20 (Excerpt concluded.)

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22  
23  
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CERTIFICATION

*I certify that the foregoing is a true, complete and  
correct excerpted transcript of Volume 13 of the proceedings  
held in the above-entitled matter.*

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Paul L. McManus, RMR, FCRR

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Date